

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW JERSEY  
3                   Civil No. 2:17-md-02789-CCC-MF

4           IN RE PROTON-PUMP INHIBITOR           :   TRANSCRIPT OF PROCEEDINGS  
5           PRODUCTS LIABILITY LITIGATION       :       - Status Conference -  
6           (No. II)                               :           BY TELEPHONE  
7           - - - - - x

8   Newark, New Jersey  
9   April 22, 2020  
10    Commencing 11:00 a.m.

11       B E F O R E:

12   THE HONORABLE CLAIRE C. CECCHI,  
13   UNITED STATES DISTRICT JUDGE

14       Pursuant to Section 753 Title 28 United States Code, the  
15       following transcript is certified to be an accurate record as  
16       taken stenographically in the above entitled proceedings.

17       S/WALTER J. PERELLI

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1 (Off the record discussion.)

2 THE COURT: Let's begin then.

3 We are on in the matter of In Re Proton Pump Inhibitor  
4 Products Liability Litigation, it's 17-mdl-2789.

5 Let's have appearances of counsel.

6 MR. SEEGER: Good morning, your Honor. Chris Seeger  
7 for Plaintiffs.

8 MS. O'CONNOR: Good morning, Judge. Stephanie  
9 O'Connor for the Plaintiffs.

10 MR. PENNOCK: Good morning, your Honor. Paul Pennock  
11 for the Plaintiffs.

12 MR. LONDON: Good morning, your Honor. Michael London  
13 for the Plaintiff.

14 MR. GRAND: Good morning. Jeff Grand for the  
15 Plaintiffs.

16 MR. OVERHOLTZ: Good morning, your Honor. Neil  
17 Overholtz for the Plaintiff.

18 MR. KATZ: Good morning. Seth Katz for the  
19 Plaintiffs.

20 THE COURT: Okay. Is that everyone for the  
21 Plaintiffs?

22 Let's turn this over to Defendants.

23 MR. BROWN: Arthur Brown for AstraZeneca. Good  
24 morning.

25 MR. HINDY: Good morning, your Honor. Greg Hindy,

1 AstraZeneca.

2 MS. FISHER: Good morning, your Honor. Amy Fisher for  
3 AstraZeneca and Merck.

4 MR. DOUGLAS: Good morning, your Honor. Matt Douglas  
5 for AstraZeneca.

6 MR. THOMPSON: Good morning, your Honor. Craig  
7 Thompson for Takeda and Abbott.

8 MS. KNUTSON: Good morning. This is Sherry Knutson,  
9 also for Takeda and Abbott. Beth Rose is appearing for us as  
10 well on the participant line, and Chris Allen is with us from  
11 the Litigation Department.

12 MR. ALLEN: Good morning, your Honor.

13 MR. GREEN: Good morning, your Honor. This is K.C.  
14 Green appearing in court for the first time in a 1990  
15 Cincinnati Reds World Series sweatshirt.

16 THE COURT: All right.

17 (Laughter.)

18 MR. McCONNELL: Good morning, your Honor. Stephen  
19 McConnell on behalf of GSK.

20 MR. HOLIAN: Good morning, your Honor. Matt Holian  
21 from DLA Piper on behalf of Pfizer.

22 MR. MATTHEWS: Good morning, your Honor. Stephen  
23 Matthews from DLA Piper on behalf of Pfizer.

24 MR. REISSAUS: Good morning. Andrew Reissaus for  
25 Novartis. Good morning.

1 THE COURT: Okay. Is that everyone? I think so.

2 Well, welcome, everyone. How is everyone doing? Are  
3 you faring through this crisis?

4 Everyone doing okay?

5 UNIDENTIFIED VOICE: We are.

6 MS. FISHER: Yes, your Honor. Thank you, Judge.

7 THE COURT: Understood.

8 This has not been easy, but I appreciate you all  
9 participating in this teleconference. We will try and deal  
10 with the open issues that we have in this case and try to keep  
11 pace with our schedule as we have it as best we can.

12 As I indicated, we did receive our agenda. I have the  
13 agenda before me. I don't know how you would like to proceed.  
14 Do you want to proceed in terms of the order on the agenda?  
15 And does anyone sort of want to act as a point person for each  
16 side and let us know who is going to be talking to the specific  
17 issues?

18 MR. SEEGER: Judge, probably going in the order on the  
19 agenda, just because we have so many speakers and we're doing  
20 it telephonically, might make sense just to --

21 THE COURT: Does that sounds fine?

22 MS. FISHER: Yes, your Honor.

23 THE COURT: Okay. The first issue is the Update on  
24 the Bellwether Trial Pool and Strike Process and  
25 Bellwether-specific Issues.

1           MR. SEEGER: So, we have AstraZeneca on the agenda and  
2 we have an issue to raise here that we think is incredibly  
3 important. And just to put it in context, your Honor, you  
4 worked incredibly hard trying to put together, helped us put  
5 together a bellwether program which we got to. We worked out a  
6 process for randomizing cases and then striking them.

7           The issue I want to raise and put -- and I think we're  
8 raising it incredibly early. We were going to raise it April  
9 2nd but that got pushed off because we were in the middle of  
10 the COVID-19 situation and it just wouldn't have made sense to  
11 go forward, so we are raising it at the first possible  
12 opportunity regarding the New Jersey bellwether cases.

13           There is a particular case -- so, two cases were  
14 selected by the Defendants, two cases were put in from  
15 Plaintiffs. What happened in the strike process is the  
16 Defendants struck the two cases put in by the Plaintiffs,  
17 that's their right to use their strikes, and we struck one of  
18 the cases, one of the two cases put up by the Defendants. The  
19 case we did not strike is the one we want to talk to you about  
20 and ask you how you'd like to handle the problem I'm about to  
21 frame.

22           The case is a Plaintiffs' case. So to frame this  
23 briefly, your Honor, because these calls tend to go longer than  
24 they need to. So this particular case has a number of problems  
25 that we would like to frame for your Honor. It's really the

1 example that I framed in chambers many times and said that  
2 cases will be picked that are absolutely untriable. And if you  
3 remember, the concern that the Plaintiffs always have is that  
4 the Plaintiffs will not only take a triable case but it will be  
5 too good. And our concern was that cases would be put in that  
6 really shouldn't have been selected in the first place, and  
7 this is a perfect example.

8           There is a long record here of, you know, let's just  
9 say opioid drug product use that would make this case not only  
10 not representative, but not proper for a trial. And  
11 definitely, even if it were a case that would up for trial one  
12 day, would not on the kind of case that we think the Court  
13 would want to try in the first round of bellwether picks.

14           So here's the problem. Let's assume we go ahead and  
15 we brief this for your Honor or we explain it further and you  
16 agree with us, now we're stuck with no cases for New Jersey to  
17 try. Which to me sounds like the Defendants had their one shot  
18 at their trial, they wanted their New Jersey trial, they  
19 selected a case that really should have never been selected,  
20 and there are plenty of cases that could have been picked from.  
21 We think that once we show you the details and the facts and  
22 the records behind this case, we think you'll agree.

23           So I think the next question is: What's next?  
24 Because I think as part of the bellwether process we agreed to  
25 a New Jersey case being in the mix, I think it was the second



1 case if I remember.

2 THE COURT: Yes.

3 MR. SEEGER: So there are a lot of solutions to this.  
4 One solution is we could put all the New Jersey cases back in,  
5 work them up and the Court can pick the one that you would like  
6 as the second case.

7 The problem and the reason we're raising this early is  
8 because we think we should make this showing to you now based  
9 upon the records that exist that they have and we have. And if  
10 you agree this case shouldn't be in, then I don't think either  
11 side should have to spend money doing depositions or continuing  
12 to work it up for a trial that won't occur any time soon for  
13 that case.

14 So I'm trying to flag some of these issues. And maybe  
15 at this point I'll stop talking and if your Honor wants a  
16 defendant to address it they can but --

17 THE COURT: I was going to say, did you have an  
18 opportunity to speak with any of the Defendants on this issue?  
19 That's number one. And number two is, I'm not sure what you  
20 said in the beginning in terms of this particular individual.

21 So you chose not to exercise the opportunity to  
22 strike? Is that it?

23 MR. SEEGER: We didn't. In the same sense that you  
24 would be using a peremptory for a case that should be caused  
25 off. We just felt like there's no way -- we felt like it was

1 going to be obvious. Look, if we're wrong, we're wrong. But  
2 we feel like it's going to be very obvious to the Court when  
3 you see the facts behind this case that the case never should  
4 have put in and we should not have had to use a strike on a  
5 case like this.

6 THE COURT: Okay. Who would like to respond?

7 MR. BROWN: We may have more to add. But as Chris  
8 pointed out --

9 THE REPORTER: Please identify yourself.

10 MR. BROWN: This is Arthur Brown.

11 THE COURT: How are you?

12 MR. BROWN: I'm doing well. Chasing a 14-month  
13 around, but that's okay. He's outside my door now looking at  
14 me.

15 So, Chris has not raised this particular issue or this  
16 case with me since the pandemic came on. But I want to remind  
17 the Court of a couple of things. First of all, we worked for  
18 over a year on this bellwether selection process. This process  
19 included randomizations, using strikes, and these 19 cases,  
20 including the one mentioned by Mr. Seeger, I think are  
21 representative.

22 Chris points out correctly that there were four cases.

23 He could have struck this case. The Plaintiffs had  
24 six strikes and they could have struck this case, and that  
25 they're looking to get an extra strike here does not make

1 sense.

2 There was a Jersey case that the Plaintiffs Steering  
3 Committee did strike but they left that case -- this case --  
4 alone, and now they're coming back to try to remove it from the  
5 pool.

6 Mr. Seeger is right, that he did raise drug use as an  
7 issue in chambers I believe. I'm not sure we discussed it on  
8 the record.

9 THE COURT: Yes, we definitely discussed it at some  
10 point. I'm not sure whether it was in conference or whether it  
11 was on the record if you ended up with someone who was in this  
12 type of category.

13 MR. BROWN: Right. And there is one plaintiff here --  
14 and I'm sorry I used the name earlier -- but the one New Jersey  
15 plaintiff remaining here has some history of drug use. And  
16 interestingly, we've looked at this. And of the chronic kidney  
17 disease patients that exist in the U.S., 12 percent of them  
18 have used cocaine, heroin, or methamphetamine. I mean, I will  
19 provide those cites to the Court. But that one of the 19  
20 remaining bellwether Plaintiffs, in a process we negotiated  
21 over a year, appears in this pool should come as a surprise to  
22 nobody. Because more than 12 percent of the CKD population in  
23 the U.S. have some history of drug use. Said another way:  
24 That we have one of 19 is indeed representative.

25 And to revisit this process after a year of

1 negotiations, after more times than I can count sitting in the  
2 back on the phone, on the record, at this point when we have a  
3 New Jersey plaintiff that the Plaintiffs could have struck and  
4 did not does not make sense to me and would be unfair for this  
5 process.

6 THE COURT: Let me just ask you both collectively:  
7 How many New Jersey plaintiffs did we have in the pool to pick  
8 from?

9 UNIDENTIFIED VOICE: That's a good question.

10 UNIDENTIFIED VOICE: Four, your Honor.

11 MR. SEEGER: There was a total of four that it wound  
12 up. So they struck our two cases and we struck one, and then  
13 we have this issue on the one remaining.

14 But do you mean in the larger pool?

15 THE COURT: No, in the pool that you were able to pick  
16 from where we had --

17 MR. SEEGER: Oh, four.

18 THE COURT: -- we did the random selection and the  
19 whole analysis from which you actually ended up picking the  
20 plaintiff from.

21 MR. BROWN: There were eight New Jersey plaintiffs I  
22 think out of like 210 cases.

23 MR. SEEGER: Very representative. Look it's part of  
24 the bellwether process. I do want to let the Court know -- and  
25 Arthur is right that we have not specifically discussed this

1 case -- but we did -- when we looked at this we did try to  
2 negotiate a deal with the Defendants -- Arthur, I don't  
3 remember if it was you or one of my team approached you -- but  
4 it was that there would be no strikes for Jersey cases and that  
5 ultimately we would work them up. Any issues with them we  
6 would bring it to your Honor and then ultimately once they were  
7 worked up through Court, discovery and whatever, the Court  
8 could then make the decision which New Jersey case to try,  
9 because there are so few of them.

10 THE COURT: There are few of them, I agree.

11 MR. SEEGER: Yes.

12 THE COURT: Do you want to take a stab at trying to  
13 work through this issue?

14 MR. SEEGER: Yes, sure, always happy to do it. You  
15 know, sometimes we're successful.

16 THE COURT: If you could give us something to work  
17 with.

18 MR. SEEGER: Yes, your Honor, absolutely we'd love to  
19 do that. And like I said, we just wanted to raise it early  
20 enough so the defense was aware of the issue that we're raising  
21 and you're aware, and we'll keep circling back. But we wanted  
22 to --

23 THE COURT: I think that makes sense. Because, look,  
24 obviously there's two ways to handle it: Either one, either  
25 the bellwether plaintiff goes forward or doesn't. But if

1       there's a chance that the plaintiff is not going to go forward  
2       there's no need for everyone to spend time and expense on that  
3       particular plaintiff. And I'm not saying what we're going to  
4       do on this because I want to think about it and also hear what  
5       you may come up with in terms of suggestions once you have an  
6       opportunity to speak about it so I can further ponder where  
7       you're at and then what we might actually end up doing.

8               But I do recognize it's a small pool of New Jersey  
9       Plaintiffs, and I also recognize that we talked about no one  
10      was interested in having someone -- I think we specifically  
11      used the word "drug addict" -- in the case. And I'm not  
12      certain what the situation is with this particular plaintiff,  
13      but if the factors are so extreme we did come to some sort of  
14      an informal agreement that those type of plaintiffs were not  
15      the ones that should end up in the bellwether population  
16      ultimately going to trial.

17             So with that, nothing that I've said there is new. I  
18      believe that's what has transpired. But I suggest that perhaps  
19      you go back and talk about it and we can pick it up during our  
20      next conference, or if anyone wants to do a short conference  
21      just designed to flesh out this issue prior to our next major  
22      conference we could do that as well.

23             How does that sound?

24             MR. BROWN: Your Honor, just to make the record clear,  
25      the Defendants did not formally or informally agree that

1 someone who has used drugs is not representative. I just gave  
2 you statistics about the prevalence of drug use in the CKD  
3 population. That said, of course if the Court is ordering us  
4 to meet and confer, we can do that. There's a solution here:  
5 The Plaintiffs can dismiss that case and the Defendants can  
6 replenish and select another case.

7 MR. SEEGER: That's our problem. That's exactly the  
8 angle and the gamesmanship that's going on here that we're  
9 trying to avoid, Arthur, and that's why I'm raising it with the  
10 Court. Because whatever the Court decides, we're going to go  
11 along with it one way or another obviously.

12 But for you to just cite statistics -- look, you're an  
13 excellent lawyer and a great guy, but you're not an expert on  
14 this. And you citing stats like this doesn't mean anything.  
15 We'll probably find statistics that say other things.

16 The bottom line though is that if somebody is abusing  
17 an opioid product, there are many issues that go into that,  
18 many issues having to do with the person himself, and sometimes  
19 they're not at fault at all. So if you're picking somebody  
20 with a cocaine, a heroin or opioid problem it's going to become  
21 a trial about their addiction and it's not going to be very  
22 informative and it's not going to produce any useful  
23 information for the reason that we're doing bellwether trials.  
24 That's our view.

25 Now, I know you disagree and I'm happy to talk about

1       it. You and I talk once a month anyway.

2               MR. BROWN: Yes, but you chose not to use a strike on  
3       it.

4               MR. SEEGER: We didn't think we should. I absolutely  
5       acknowledged that in my presentation to the Court. We did not  
6       use a strike because we think this one is really out in left  
7       field. That is absolutely our view.

8               THE COURT: So why don't you do this: Whoever needs  
9       to talk on the Plaintiffs' and Defendants' side you can get  
10      together and flesh that out a little bit. As I said, if we can  
11      get in to a head or if you have a stumbling block and you want  
12      to do a quick conference regarding just this issue, that's fine  
13      as well. I'm here and available to go through this issue. But  
14      I think in terms of the agenda and the length of the agenda at  
15      this point in time, I think that's enough on this and we can  
16      have you go meet and confer and then report back to us so we  
17      can try to move it forward. How does that sound?

18              MR. SEEGER: Thank you, your Honor, that's perfect.

19              THE COURT: Great. Let's move forward.

20              Our next issue is Plaintiff-specific Deficiencies.

21              MS. FISHER: Yes, your Honor. This is Amy Fisher on  
22      behalf of AstraZeneca and Merck, and I can address this.

23              THE COURT: Go ahead.

24              MS. FISHER: Good morning.

25              THE COURT: Good morning.



1 MS. FISHER: We are continuing to identify missing  
2 data points for the 19 bellwether plaintiffs as we dig further  
3 into these cases. There's one that I wanted to raise  
4 specifically today, and we can raise additional as we find in  
5 future conferences. But I think the overall issue here is that  
6 for these 19 picks, counsel must immediately respond to provide  
7 the information that is missing or this process can't move  
8 forward.

9 So specifically today the issue we wanted to raise is  
10 for Plaintiff Christine Bertram, a plaintiff-picked case  
11 represented by Weitz & Luxenberg. We are missing proof of  
12 personal representative information which makes the  
13 authorizations not viable. So we would like the Court to  
14 instruct the Weitz & Luxenberg firm to provide that as soon as  
15 they are able to.

16 THE COURT: Okay. Counsel.

17 MR. PENNOCK: We are and have been working to obtain  
18 the appointment of the administratrix. That process is  
19 expected to conclude in a matter of a few weeks here. It is  
20 Weitz & Luxenberg's only case that happened to end up in this  
21 pool. We are working on it really diligently. I mean, I can  
22 provide the details on that if anyone wants it. But recently,  
23 in fact, we sent a mobile notary out to the home of the  
24 daughter to get the papers signed and we really don't think  
25 that this will in any way inordinately impede the progress of

1 this bellwether case. It may be one that lags a little behind  
2 some of the others, but in all bellwether processes there are  
3 cases that move forward faster and cases that move forward  
4 slower. At this point this will be one that moves forward a  
5 little more slowly. But who knows, by the end of this process  
6 it could be at the front of the pack. I mean, I know that I  
7 have handled bellwether processes more times and for longer  
8 than really anyone on this phone, any lawyer on either side on  
9 this phone I should say. So I've seen cases start out slowly  
10 in the process and then end up to be the case that's done  
11 first.

12 So we're working on it diligently, and I submit to the  
13 Court that we will get this rep appointed and do everything we  
14 have to do to get these records in the hands of the Defendants.

15 THE COURT: Okay. And again, there are authorizations  
16 for records, is that it?

17 MR. PENNOCK: Yes, the rep has to be appointed to sign  
18 the authorizations, and we've appointed at the very least on an  
19 interim basis.

20 THE COURT: And again, in terms of your time frame,  
21 you think it's what, very generally?

22 MR. PENNOCK: I'm sorry, your Honor?

23 THE COURT: In terms of your time frame to get the  
24 representation or get the representative to do -- the  
25 administratrix, how long did you say about?

1           MR. PENNOCK: Well, we have an estate lawyer engaged  
2     in the estate in issue, and we're thinking it's going to be  
3     probably at least 30 days.

4           THE COURT: Thirty days. Okay.

5           MS. FISHER: Your Honor, could we get a deadline maybe  
6     in advance of the next status conference to get an update on  
7     the status of that proceeding?

8           THE COURT: I think that's fine.

9           Mr. Pennock, when do you think you could give an  
10    update?

11          MR. PENNOCK: I think I'll be able to give an update  
12    in a couple weeks, Judge. I mean, so I'll give it to Amy just  
13    as soon as I have information that gives us a better sense of  
14    when the Order will come out. We're going to do everything we  
15    can to get the Court involved to do this quickly. And again, I  
16    think we'll be on track with this case well within the time  
17    frames that we're hoping to get this bellwether process  
18    completed.

19          THE COURT: Okay. Do you want to give an update in,  
20    what, 14 days? Do you think that will be doable?

21          MR. PENNOCK: Yeah, I think that will be, Judge.

22          THE COURT: Okay. By the way, Mr. Grand, you usually  
23    help us with the proposed form of order. Would you mind taking  
24    down what our dates are?

25          MR. GRAND: Yes, your Honor.

1 THE COURT: Okay. Great. Thank you.

2 MS. FISHER: Your Honor, 14 days would be May 6th.

3 THE COURT: May 6th it is. Okay.

4 MS. FISHER: Thank you very much.

5 THE COURT: Thank you.

6 MS. FISHER: Thank you, Mr. Pennock.

7 MR. PENNOCK: Thank you.

8 THE COURT: Okay. Let's move to the next issue.

9 We have Updating Defense Fact Sheets in accordance  
10 with Case Management Order 22 and Defendants' Fact Sheets  
11 Deferral Agreements between the parties.

12 MR. GRAND: Yes, your Honor, this is Jeff Grand. I'll  
13 be addressing this issue.

14 THE COURT: Great. Thank you.

15 MR. GRAND: This relates to custodial file productions  
16 that were initially asked by the PSC to accompany the defense  
17 fact sheet, and what this relates to are sales representatives  
18 that called on the Plaintiffs' prescribing physicians. And  
19 these are important for discovery, particularly core discovery,  
20 because these files typically contain notes about the  
21 interactions with the physicians, any questions or concerns  
22 that may have been raised by a physician, the materials that  
23 were provided to physicians about the drugs. So it's an  
24 important part of Plaintiffs' discovery and part of working up  
25 any case.

1           Now, we've initially asked that all of them be  
2     produced. And at the time we were negotiating the Defense Fact  
3     Sheets, Defendants I think appropriately pointed out that it  
4     was too burdensome for them to produce it for every case, so we  
5     created a Deferral Agreement that would make that production  
6     happen after the bellwether pool had been picked.

7           So on April 3rd we requested production of all of the  
8     sales custodial files for the bellwether cases. Defendant  
9     didn't respond to us for two weeks, at which point they stated  
10    they wanted a uniform cap for all the Defendants of the four  
11    custodial files per case. They're saying they can't produce  
12    these files for 90 days despite the fact that they've known who  
13    these folks are for some time now, and they also wanted to  
14    further restrict production of the district managers who  
15    supervise the sales reps until after the trial cases are  
16    selected.

17           Now, this is unacceptable to Plaintiffs for several  
18    reasons. One is, we actually need to look at the sales rep  
19    custodial files in order to determine which reps we want to  
20    depose. They want us to pick blindly four cases, you know,  
21    four sales reps, get their files, and then decide out of those  
22    four which ones we should depose.

23           That's backwards, your Honor. And, frankly, we don't  
24    think there should be uniform caps for all Defendants, because  
25    Defendants are situated very differently in this case. For

1 example, Takeda, the Takeda Defendant only has two cases in the  
2 trial pool. It may be perfectly appropriate for them to  
3 produce all the sales reps in those two cases and that may not  
4 be much of a burden. AstraZeneca is in I think almost every  
5 case, they may have different concerns. But I think it  
6 shouldn't be sort of a global cap, they should just produce  
7 them all. Because, frankly, when we were discussing the  
8 bellwether process, Plaintiffs' initially proposal was for six  
9 cases. It was Defendants who insisted that we have a large  
10 bellwether pool, and now that we have one they're saying it's  
11 too burdensome for them to produce the custodial files that  
12 they previously agreed to produce.

13 THE COURT: Okay. Let me jump in. Let me ask you.  
14 In terms of the custodial files, I recognize there's a  
15 different amount for each Plaintiff, but what is the range?  
16 How many are we talking about roughly per Plaintiff? Or what  
17 is the highest amount that you have for Plaintiffs?

18 MR. GRAND: The highest amount I've seen for a  
19 plaintiff -- and forgive me, your Honor, I'm not versed in  
20 every single plaintiff's defense fact sheet -- but the highest  
21 that I've heard of thus far is there is one -- I believe one  
22 Defense Fact Sheet where there's 11 custodial files named.

23 MS. KNUTSON: Your honor, this just points out, we  
24 have two cases in the bellwether pool. In one of those cases  
25 we have 29 caps on Takeda sales representatives and that does

1 not include the district managers. So it does vary greatly  
2 from case to case. That's one that has an awful lot of sales  
3 reps and would be quite burdensome for them to produce them  
4 all.

5 MR. DOUGLAS: Just for context, we are in 18 of the  
6 bellwether cases, and just the sale rep custodial files alone  
7 total 690 that we have identified, and that also does not count  
8 the district managers. So we're talking about a massive number  
9 of custodial files. The request from the Plaintiffs is way out  
10 of line with what other MDL courts and consolidated litigations  
11 from state court cases have ordered. So that's why we did  
12 respond to them and said, you know, this is not going to work  
13 and we need to talk about it. And, your Honor, we have not yet  
14 had a meaningful opportunity to meet and confer about this one  
15 either.

16 THE COURT: Okay. I'm going to say, it sounds like  
17 it's probably not enough since these are actually bellwether  
18 plaintiffs and we're going to proceed to trial at least on some  
19 of them at this point. But I recognize that if we're close to  
20 700 files, 690 custodial files, you know, that is a significant  
21 number as well. Tell me what other judges have done from your  
22 perspective.

23 MR. DOUGLAS: Your Honor the Benicar litigation in the  
24 District of New Jersey in 2016, the order was for the  
25 plaintiffs to identify one sales representative for each

1 bellwether case, which was then -- the custodial file was to be  
2 produced. The same as in the Zarelto litigation in the Eastern  
3 District of Louisiana, 2015. And the GIT and the Pelvic Mesh  
4 Litigation, it was either one or two sales reps.

5 I would point out that Plaintiffs are not picking  
6 blindly. They have the call notes, and have for some period of  
7 time, which have the recording of the interactions with each of  
8 the sales representatives with the doctor and a record of that,  
9 so they do have those to help narrow who they might want to  
10 depose and talk to. So, that's what we've seen in other  
11 litigations.

12 MR. PENNOCK: Your Honor, this is Paul Pennock.

13 There certainly is an ability in terms of what has  
14 been ordered in terms of sales reps in different MDLs. But  
15 certainly limitations of one or two, I wouldn't say that that  
16 is typical. It could even be on a case-by-case basis. I mean,  
17 very often there will be multiple, very important sales reps  
18 with respect to the prescribing doctors. Sometimes it's  
19 because they're teaming up, sometimes it's because it's  
20 different time periods. One rep is detailing at the initiation  
21 of the prescription, another rep is detailing a few years later  
22 when some label changing occurs, and there were some minimal  
23 label changes here over time, or other scientific information  
24 has come out.

25 And so, you know, to really to have an arbitrary



1 window, especially a small one, is going to be I think  
2 ultimately very prejudicial in many of the cases.

3 THE COURT: Okay.

4 MR. PENNOCK: Then I don't want the experience that  
5 was just related, I don't know if it was by Matthew Douglas or  
6 someone else, for the Court to think that's how things have  
7 been handled. We can come up with numerous examples where the  
8 sales rep discovery has not only been extensive but ultimately  
9 critical at the time of trial.

10 THE COURT: Okay.

11 MR. GRAND: Jeff Grand.

12 Just to be clear, I want to make sure there's not  
13 confusion between the number of depositions that are taken of  
14 sales custodians, sales reps and the number of custodial files  
15 that are produced before that can happen. Because what we're  
16 talking about is having a custodial file so we can make the  
17 selections we need to make. And it's not just limited to call  
18 notes. Call notes are just a piece of the puzzle.

19 MR. PENNOCK: That's true, Judge. And, in fact, I  
20 mean many years most of the -- well, several of the  
21 manufacturers switched to drop-down menus for the call notes.  
22 So whereas the call notes used to be an organic process where  
23 the rep would actually write things in and the notes would be  
24 somewhat informative as to what was going on in reality, they  
25 switched to these drop-down menus that just completely

1 constrain what was recorded and it was almost meaningless and  
2 rote and repetitive for all of the doctors. So what Jeff is  
3 saying, we need to get way beyond the call notes to get into  
4 these files to make reasonable selections of who we think we  
5 should be deposing.

6 THE COURT: And if we're exploring that, as long as  
7 there are drop-down menus, are these files voluminous? What do  
8 they actually contain?

9 MR. PENNOCK: Well, the call notes which we have,  
10 they're fairly voluminous but it's almost often in the nature  
11 essentially of a spreadsheet. It's a database of notes that  
12 are made on a laptop.

13 THE COURT: Okay.

14 MR. PENNOCK: The files are beyond that. That's the  
15 communications happening between and among the team that's  
16 detailing the doctors. Emails and so forth are very important  
17 evidence as to what was actually happening at the point of  
18 contact regarding the central aspects of this claim, which is  
19 failure to warn and learned intermediary.

20 THE COURT: Let me ask the Plaintiffs. Would it be of  
21 assistance to get call notes first and look at them and then  
22 determine what custodial files you actually need thereafter?

23 MR. GRAND: We already have the call notes, your  
24 Honor. Those were produced as part of the defense fact sheet.

25 THE COURT: Okay.

1           MR. GRAND: The component, as Mr. Pennock had pointed  
2 out, is we don't have any of the communications amongst the  
3 team, we don't have -- that discussed concerns that may have  
4 been raised by doctors. For instance, when news articles go  
5 out, you know, people in corporate will push out: Here's what  
6 you should say to doctors if they ask you this question. That  
7 gets funneled out through the district managers to the sales  
8 reps. These are the types of things that are contained in  
9 these files, and that's why we need to look at these files  
10 before we can pick which sales reps we want to depose.

11           As I think Mr. Douglas pointed out, we only have four  
12 depositions that we can take in each case. The Plaintiffs only  
13 have four, so we have to choose carefully. And to do so we  
14 need to be educated as to what's in the file. We can't make  
15 the selection strictly from call notes.

16           THE COURT: Okay. So you have all the call notes as a  
17 base level here, you've already been provided them now, it's  
18 the fuller file that you're seeking?

19           MR. GRAND: Exactly, your Honor.

20           THE COURT: Let me turn to the Defendants on this.

21           If it's 695 and we're dealing with a very large MDL,  
22 it doesn't sound like a very large number at the onset.

23           MR. DOUGLAS: Your Honor, if I could clarify, there's  
24 always been 128 custodial files produced by AstraZeneca  
25 company-wide. This is all the emails, this is the full

1       custodial file. And they request now an additional 700. Those  
2       were produced every 120 days that the original 128 in batches  
3       of 10 to 13, and now they've asked for 700 custodial files in  
4       21 days. That was, you know, an enormous magnitude --

5               THE COURT: I mean, it may be digitized though.

6               MR. DOUGLAS: Well, one, the collection of custodial  
7       files right now have to take place remotely which impacts the  
8       speed at which it can be done. But there's a reason that we  
9       negotiated it in the first instance 120 days per -- and then  
10      they request and waived the original custodial files. These  
11      are no different. These are company employees, some of who  
12      have been there for a long time, massive amounts of emails and  
13      shared documents and things that were distributed.

14              And I want to clarify. The call notes do contain  
15      significant information. They're not just meaningless  
16      drop-downs in this particular case, and they have those since  
17      2018 and 2019 for the volumes of individuals, so that they are  
18      able to narrow that. Which is why I also want to clarify that  
19      the orders that I was talking about in Benicar and Xarelto and  
20      other pharmaceutical litigations were limited to custodial  
21      productions for sales representatives, typically one or two.  
22      I'm happy to look at other orders the Plaintiffs want to send  
23      for other things, but nothing I've ever seen got into the  
24      hundreds. That's so far beyond the scope of what anyone has  
25      done with the incredible burden on the company that --

1           THE COURT: Let me turn to the Plaintiff. Let me turn  
2 to the Plaintiff.

3           Is there any way to narrow the scope here?

4           MR. GRAND: Your Honor, I'm happy to meet-and-confer  
5 with them as we initially tried to do. And I think Mr. Douglas  
6 is correct, we weren't able to do it before this conference,  
7 but I want to -- I would rather negotiate with them  
8 individually rather than deal with some sort of global cap  
9 across all parties.

10          THE COURT: Okay. Why don't we do that. Why don't we  
11 do that, and why don't we start that and have date by which  
12 you're going to communicate with the various separate  
13 defendants. Do you want to talk within the week?

14          MR. GRAND: Yes, we can certainly do that within seven  
15 days, your Honor.

16          THE COURT: How is that for the Defendants?

17          MR. DOUGLAS: That's fine. We're happy to talk  
18 individually with them as well.

19          THE COURT: Okay. Perfect.

20          Is that good for everyone? Why don't we do this:  
21 Does anyone have an issue with the seven days?

22          (Silence.)

23          THE COURT: No? Okay.

24          I am looking at my phone which is beeping. The  
25 receiver doesn't go off. If it does go off I'll have to jump

1 off the call for a moment and get back on. But in any event,  
2 let's move on.

3 Okay. So then now I'm moving on to Tolling Motions.  
4 I think this is organized so we can proceed efficiently.

5 As far as the March 10, 2020 Order to Show Cause,  
6 which is Docket Entry 562, I have that in front of me. I  
7 believe there's no issue with respect to that. Correct?

8 MS. FISHER: Your Honor, that's correct. We have  
9 proposed dismissal orders for --

10 THE COURT: I think the proposal dismissal order is at  
11 563. Is that accurate as well?

12 MS. FISHER: The docket entry for the Order to Show  
13 Cause is 562. There are 67 of the 68 plaintiffs that did not  
14 respond to the Order to Show Cause, and so those cases are  
15 already automatically dismissed without prejudice. However, in  
16 the past with other Orders to Show Cause you have gone ahead  
17 and issued individual dismissal order entries on each of the  
18 docket --

19 THE COURT: Yes, I think 563 is an example of a past  
20 order that we did and we're planning to use it as a template  
21 for the ones moving forward.

22 MS. FISHER: Okay. Thank you.

23 THE COURT: Let me just make sure. Any issues from  
24 anyone on that?

25 MR. LONDON: Mike London, your Honor.

1           There are no issues with respect to the 67 dismissals  
2   of the 68 Plaintiffs on that Order to Show Cause, Docket 562.  
3   There is an issue -- and the Court might be getting it to on  
4   the next item -- with respect to a potential, or a requested  
5   dismissal with respect to one Plaintiff, Ms. Weese. And the  
6   Plaintiffs oppose dismissal of that case and --

7           THE COURT: I think it's 67 out of 68. I think that's  
8   how the Plaintiffs were presenting it. No?

9           MR. LONDON: That's correct.

10          THE COURT: Okay. Except for Ms. Weese?

11          MR. LONDON: Yes, that's correct.

12          MR. GREEN: But Defendants don't agree that number 68  
13   shouldn't be in the mix too. But it has to be dealt with  
14   separately than the other 67 of course.

15          THE COURT: Okay. We have agreement on the 67 at  
16   least?

17          MR. GREEN: Correct.

18          MS. FISHER: Yes, your Honor.

19          THE COURT: All right. So we will take care of that.  
20   We did will do a dismissal order that is similar to what we did  
21   in 563. Okay?

22          The next matter on our agenda is the Proposed Orders  
23   to Show Cause regarding 7 Carey, Danis and Lowe Plaintiffs, and  
24   that was submitted by consent on April 9th, 2020 for entry.

25          MS. FISHER: Correct, your Honor.

1           THE COURT: Is there any issue as to that, or can we  
2 proceed along the same lines as we just discussed with respect  
3 to the -- well, actually on that we would be entering the Order  
4 to Show Cause. Correct?

5           MS. FISHER: Correct, and that's a consented order,  
6 there is no issue, we can go ahead and enter that and start the  
7 deadline running.

8           THE COURT: Anyone with an issue?

9           No. Okay. So we will be doing that. That sounds  
10 fine.

11           The next issue is Proposed Case Management Order  
12 Number 9A.

13           MR. PENNOCK: Sorry to interrupt, but we skipped one  
14 bullet point.

15           THE COURT: I'm sorry.

16           MS. FISHER: Your Honor, we also have as a consented,  
17 non opposed proposed Order to Show Cause for 224 Plaintiffs  
18 from the Aylstock firm --

19           THE COURT: Yes, I have that as well.

20           MS. FISHER: -- from April 17th, for entry.

21           THE COURT: Is there any issue on that one?

22           MS. FISHER: There is not, your Honor. That's  
23 consented.

24           THE COURT: Okay.

25           MS. FISHER: We also have the Douglas & London



1 Plaintiff Weese responsive to the Order to Show Cause which is  
2 fully briefed at Docket Numbers 562, 566, 567.

3 And I believe, Mike, we submitted an additional  
4 document.

5 THE COURT: Yes. So I understand that. The Weese one  
6 we have issues with, but what I was going to go through were  
7 the ones that were agreed upon. So that at this point in time  
8 I think we have the agreed upon, we're going to be a dismissal  
9 corresponding to the March 10th, 2020 Order to Show Cause,  
10 which was is Docket Entry 552; then we have the 7 Carey, Danis  
11 and Lowe Plaintiffs and we're going to go ahead with an Order  
12 to Show Cause on that. We have the other issue with respect to  
13 the Alystock application as well, we're going to be dealing  
14 with that. I understand Weese has some contested issues so  
15 we're going to hold that for now. There is also something on  
16 here regarding a meet-and-confer with a Weitz & Luxenberg  
17 plaintiff, so what are we doing on that issue?

18 MS. FISHER: Yes, your Honor. So, we have been trying  
19 to go through the remaining Plaintiffs subject to the tolling  
20 motions to dismiss. There are 4,537 Plaintiffs who remain  
21 pending on tolling motions to dismiss. And we're tackling them  
22 in small bites as you instructed and going through first those  
23 who have confirmed on their January 31st submission that they  
24 produced either no proof-of-use or proof-of-injury at all or  
25 only one category and not the other. So that's how these

1 various orders to show cause that you have been talking about  
2 today have been consented to and entered and are running their  
3 course.

4 We proposed to the Weitz & Luxenberg firm an Order to  
5 Show Cause with respect to 275 of their 2,269 Plaintiffs who  
6 remain subject to the tolling motion to dismiss. And of these  
7 275, these are all Plaintiffs who in the Plaintiffs' January  
8 31st tolling submission confirmed that they have produced  
9 either no proof-of-injury or just a proof-of-injury affidavit,  
10 and/or have produced no proof-of-use or just a proof-of-use  
11 attorney affidavit only.

12 So these are the types of Plaintiffs that are on the  
13 other orders to show cause. These are individuals who have  
14 only produced one category and not the other, or produced  
15 nothing at all. And we're not really getting anywhere with  
16 Weitz & Luxenberg on that. They're not willing to mirror the  
17 January -- I'm sorry -- February 21st Order to Show Cause for  
18 the other Plaintiffs that were on the first Weitz & Luxenberg  
19 Order. So we're not really sure what the difference is here  
20 because these are the same plaintiffs, the same type of  
21 plaintiffs who were on the initial ones, the same type of  
22 plaintiffs who were on the Care, Danis & Lowe, the Douglas &  
23 London, and the Alystock Order to Show Cause.

24 MR. PENNOCK: I hope the Court recalls, because  
25 apparently Ms. Fisher does not, that for our side, I mean I

1 took the lead on trying to address those Plaintiffs who had  
2 just utterly failed to comply with what was required of them,  
3 and ultimately through a different process, processes both  
4 through orders to show cause and voluntary dismissals 699 cases  
5 were dismissed.

6 THE DEPUTY CLERK: Counsel, counsel, the Judge's line  
7 dropped, so please hold.

8 MR. PENNOCK: Okay.

9 THE DEPUTY CLERK: Is the coordinator still on the  
10 line? Because she's not getting through.

11 (Discussion off the record regarding the Court losing  
12 phone connection.)

13 (There is a pause in the proceedings.)

14 THE DEPUTY CLERK: Okay, she's on the line. She's  
15 waiting for the coordinator to put her in.

16 THE COURT: Okay, counsel. Back on.

17 Okay. I lost you folks. Hopefully that's it. We're  
18 back on.

19 MS. FISHER: Your Honor, just let me summarize. I'm  
20 not sure where we were --

21 MR. PENNOCK: I was speaking.

22 MS. FISHER: Yes, I think Mr. Pennock was still  
23 talking.

24 So just to get a quick recap. We have an Order to  
25 Show Cause as to 275 Weitz & Lukenberg plaintiffs who have

1       either shown no proof-of-use or proof-of-injury even still  
2       today from the Tolling Agreement deadline one year ago, and we  
3       would like to move forward with that so that we can then search  
4       and look through some of the other buckets. We're still  
5       getting through these buckets of individuals who have no  
6       proof-of-use and/or proof-of-injuries.

7               So ahead, Mr. Pennock.

8               THE COURT: Okay.

9               MR. PENNOCK: Judge, as the Court may recall, I took  
10       the lead in making sure that cases that were completely  
11       non compliant and did it almost inextricably were dealt with  
12       and dealt with expeditiously and agreed to a very abbreviated  
13       Order to Show Cause to deal with those cases, and ultimately  
14       699 cases were dismissed for noncompliance.

15               These cases do not fall into that category. These 275  
16       cases are cases where affidavits of use were provided as were  
17       permitted under the agreement, or medical records were provided  
18       and, in fact, in many of them both affidavits and medical  
19       records for proof-of-use were provided. By "many," I mean  
20       dozens.

21               In the majority of cases records of proof-of-injury  
22       have also been provided. There is one case that remains  
23       completely non compliant that was discovered during this  
24       process.

25               There are approximately 35 cases where the client has

1 not returned to us the proof-of-use affidavit nor have we been  
2 able to obtain the medical records showing use. Yet, we have  
3 medical records and have supplied them that show injury. Those  
4 35 cases I would put in one bucket; and then there's the group  
5 that's in another bucket that has provided the affidavits; and  
6 then there's a group that have provided both the affidavits and  
7 the medical records. So there are multiple sub-buckets, if you  
8 will, to this group of 275.

9 My objection to what the Defendants were proposing is  
10 they wanted to (a) treat them all the same, and (b) treat them  
11 in essentially the same manner as the ones that I agreed to  
12 expeditiously deal with last year. These each will need to be  
13 addressed in a way that permits the Plaintiffs, including  
14 myself, to show what was done and the due diligence that was  
15 done to obtain perhaps for some of them relief from the Court  
16 from a dismissal. And that's why I've asked in the  
17 meet-and-confers, my partner, Mr. Sedgh, asked the Defendants  
18 to do something differently in terms of the orders to show  
19 cause. We need more time and they need to be more  
20 individualized in what they address.

21 So, I'm happy to go back to the drawing boards on a  
22 meet-and-confer, but that's the reason we've reached a  
23 loggerheads because they want to treat them as though they  
24 were completely non compliant, and we think they should be  
25 treated differently and in a more reasoned approach and

1 certainly with more time.

2 THE COURT: Okay.

3 MS. FISHER: Your Honor, can I just jump in real  
4 quick?

5 THE COURT: Yes, go ahead.

6 MS. FISHER: We're happy to meet and confer with them,  
7 but the problem here is that we've tried to. And what Mr.  
8 Pennock is saying is a surprise to me because I have not been  
9 privy to any offers to meet and confer on this issue, but  
10 rather to a very short response that they don't agree that  
11 these cases should be on an order to show cause, to which we  
12 followed up multiple times and asked for clarification and  
13 discussion.

14 THE COURT: Okay.

15 MS. FISHER: Can I clarify one thing, your Honor,  
16 which is, we're not disputing the fact that some of these 275  
17 cases have an affidavit of use or have a record of injury, but  
18 they only have one or the other. There are no cases in these  
19 275, at least as reported on claimants' own submission on  
20 January 31st, that have claimed a late cure for both  
21 categories. These are claims that have one, albeit tardy, but  
22 not the other. So we're happy to talk through it, but that's  
23 really the first step here is that we would like your direction  
24 to have a meaningful meet-and-confer in a short period of time,  
25 your Honor.

1           THE COURT: It sounds like you're both in agreement  
2           and it sounds like, I mean, that you're willing to do a  
3           meet-and-confer on this. You see this from two different  
4           perspective obviously. This is not an unusual issue, and we've  
5           heard this on other matters and we've been able to sort of  
6           bring them to a close as well.

7           So what period of time do you want to discuss this?  
8           Let me hear from both of you. Any suggestions?

9           MR. PENNOCK: Judge, I can talk to Amy at some point  
10          in the next seven days.

11          THE COURT: Okay.

12          MS. FISHER: If we could do an update to the Court in  
13          seven days I think that would be great. I mean, I would like  
14          to know if they are alleging the information on their own  
15          tolling submission from January 1st is not correct. Because  
16          based on our review of it, these are all cases that have one  
17          category but don't have the other, then I guess that submission  
18          needs to be updated and amended.

19          So I would like to know, Mr. Pennock --

20          MR. PENNOCK: The information as of the date we  
21          submitted it was correct. There are cases that have both at  
22          this point in time.

23          But the problem, your Honor -- I'll address you, not  
24          Amy -- is that there is due diligence that we will be able to  
25          demonstrate with regard to trying to collect medical records.

1 That's something completely out of our control. It's an  
2 impossibility of performance in terms of getting these records  
3 it seems to her. So I will talk to Amy about it and try to  
4 come up with a process that seems reasonable and in terms of  
5 timing and what evidence can be adduced so that the Court can  
6 decide I guess what's going to happen on these cases. I mean,  
7 I would like to get it resolved with the Defendants instead,  
8 but the short form, you know, ten-day or whatever it was,  
9 15-day order to show cause that I agreed to previously with the  
10 other cases doesn't fit for these situations.

11 THE COURT: I understand what you're saying, that this  
12 is not as easy as some of the other cases, you're going to need  
13 to go through them and flush them out a little bit more. So if  
14 you can folks can meet and confer on this, that will be  
15 helpful.

16 MS. FISHER: Your Honor --

17 THE COURT: And I think we need to move this along a  
18 little. But to the extent that will result in a resolution,  
19 that's fine, we can pick it up from where you're at.

20 MS. FISHER: Your Honor, can we get a set -- Mr.  
21 Pennock, would you be willing to provide a breakdown of the  
22 names and which category you believe these each fall into?  
23 Because we're not going to be able to have a meaningful  
24 meet-and-confer if the information on the January 31st tolling  
25 submission that was by each specific plaintiff is no longer



1 accurate.

2 MR. PENNOCK: I'll give it to you by Friday.

3 MS. FISHER: That would be great. Thank you.

4 THE COURT: Thank you for that.

5 Anything else on these motions to dismiss, orders to  
6 show cause?

7 Okay. So now as to Proposed Case Management Order 9A.

8 MR. KATZ: Seth Katz for the Plaintiffs.

9 Good morning, your Honor.

10 THE COURT: Go ahead.

11 MR. KATZ: I guess it's afternoon.

12 I've been working, and been fairly successful, in  
13 negotiating the CMO with Ms. Fisher and Mr. Camp related to a  
14 process for Plaintiffs who never served a fact sheet. If  
15 you've secured it and there's a dispute about whether or not  
16 there are deficiencies, that's not part of the process that  
17 we're talking about now, that's separate. Those would remain  
18 under the existing CMO.

19 This would just take -- kick in after not serving a  
20 fact sheet at all, getting the non compliance letter the  
21 meet-and-confer in 14 days and then we're working on that  
22 process. And we've reached a point where we're down to two  
23 issue after a lot of give-and-take and wordsmithing amongst  
24 three of us. And let me just lay out what those two issues  
25 are. The first is whether the dismissals would be without

1 prejudice like you addressed in the tolling motions moments  
2 ago, or with prejudice. And I'm sure you can guess which side  
3 is on which version of the dismissal and I probably don't need  
4 to go into that very much.

5 THE COURT: You don't need to. And obviously on this,  
6 as with everything else, I will do them without prejudice.

7 MR. KATZ: Okay. And then the other issue -- and  
8 admittedly this is one that we haven't actually had a chance to  
9 actually speak on the phone about because it came up late -- is  
10 whether or not in light of what's going on in the world,  
11 electronic signatures on the fact sheet. Now, if you don't  
12 have a signature at all, that doesn't aid your case under this  
13 CMO. But we proposed -- and again it was late in the process,  
14 it's part of a negotiation -- that some kind of electronic  
15 signature should be sufficient under this process. You know,  
16 whether it's a photograph of the signature page, whether it's  
17 an email of the signature page --

18 THE COURT: I mean, I think that that would be fine  
19 under the current circumstances.

20 Is there any issue with that?

21 MS. FISHER: Well, your Honor, we're not talking  
22 about -- I'm not opining or taking a position on electronic  
23 signatures or non original signatures for PFSS that are  
24 produced in conjunction with the deadline and CMO 9. We're  
25 talking about Plaintiffs who in some cases for two or three

1 years have failed to produce a Plaintiff Fact Sheet.

2 So the plaintiff would be subject to the CMO, they  
3 would get ample notice, they would get ample opportunity to  
4 cure, and we think that these plaintiffs should have to have a  
5 signature. Not just a photocopy of the signature. We haven't  
6 talked about that and that might be something we can work on.  
7 But what was proposed to us was an e-signature. And I just  
8 think for 426 Plaintiffs to have failed to serve a PFS after in  
9 some cases two or three years, an ample passage of time, so  
10 should at the very least have to sign with their own hand their  
11 Plaintiff Fact Sheets.

12 THE COURT: Okay. Is there any issue with taking a  
13 photo of their signature?

14 MS. FISHER: I haven't talked with the Defendants  
15 about that or the clients. I think that's something that we  
16 can certainly discuss and get back to Mr. Katz on. Again, when  
17 this came up yesterday we were just talking about e-signatures.  
18 So I guess we can talk about that and then we can get back  
19 to --

20 THE COURT: Considering where we're at now there has  
21 to be some form of an e-signature or some version of it that  
22 has to be workable. So, I think --

23 MR. KATZ: Yeah. And, you know, "e-signature" is kind  
24 of a specialized term. But e-signatures aren't good under the  
25 Care Act. But I'm happy to talk with Amy and John about this

1 particular issue and see if we can get it hammered out as to  
2 the last term and then kind of get everybody on our side on  
3 board as they're going to talk to the other defense counsel.  
4 So I don't think that would take very long. And your Honor's  
5 guidance about it being without prejudice also probably takes  
6 this down to one issue.

7 THE COURT: Perfect. And I just want to point out one  
8 thing. If you're going to do something with the Case  
9 Management Order, I know you have it listed on the agenda as  
10 9A, just give it whatever new number a case management order is  
11 as a proposed number and then you can indicate under it that it  
12 relates to number 9.

13 MR. KATZ: Okay, we can make that change easily.

14 THE COURT: All right.

15 MS. FISHER: Thank you, your Honor. This has been a  
16 extremely amicable process with Mr. Katz.

17 THE COURT: Okay.

18 MS. FISHER: So I think we can get it hammered out in  
19 the next couple of days and get something submitted to you.

20 THE COURT: Great.

21 MS. FISHER: Just to circle back real quick. We did  
22 forget -- my apologies -- one tolling issue which was related  
23 to Plaintiff Weese who was the sixty-eight plaintiff on the  
24 Douglas & London show cause --

25 THE COURT: No problem. On Weese I think we discussed

1 it. There's some opposition there. Correct?

2 MS. FISHER: Right. And I think Mr. Green for Procter  
3 & Gamble is going to talk about that on behalf of the  
4 Defendants and Mr. London for Plaintiffs.

5 THE COURT: Okay. Go ahead.

6 MR. GREEN: Your Honor, do you want us to go first or  
7 would it be better for Plaintiffs to explain why they failed to  
8 comply?

9 THE COURT: I recognize that we have some submissions,  
10 so you can be brief and highlight your position. Thank you.

11 MR. GREEN: Your Honor.

12 MR. LONDON: Your Honor, Michael London.

13 I thought the Court was taking this on submission and,  
14 frankly, we're somewhat surprised at the opposition. But  
15 nevertheless, as the Court will recall, in Docket 562 an Order  
16 to Show Cause was issued for 68 Douglas & London Plaintiffs for  
17 not providing proof-of-use and proof-of-injury records. We  
18 sent this Order to Show Cause obviously to our clients, and as  
19 indicated by Ms. Fisher earlier, 67 did not respond, one did  
20 respond. That one plaintiff is Jeanie Weese. And she provided  
21 us with injury records and proof of her use -- it was  
22 over-the-counter -- an affidavit.

23 I might not be as fresh as -- an affidavit is  
24 sufficient for proof-of-use records both in the Tolling  
25 Agreement and in the PFS. Those materials you were uploaded to

1 Markers, which is the website that the Defendants use for the  
2 records. Certain defendants who are no longer implicated said:  
3 Thank you for sending this. Can you please let us out. This  
4 proof-of-use information is sufficient. We of course let them  
5 out. And then we get a motion from Mr. Green and his client  
6 saying, interestingly, that the proof-of-use was insufficient  
7 and that it was tardy.

8 I address the insufficient argument because the  
9 Tolling Agreement I don't need to cite in line and verse, it's  
10 in our papers, says an affidavit is sufficient. The Court may  
11 recall we discussed over-the-counter uses, affidavits wouldn't  
12 be sufficient, and that was submitted.

13 The tardiness argument is also vexing because  
14 plaintiff -- granted it's late -- responded to the Court's  
15 Order to Show Cause. So if it was after the 28 days I would  
16 understand the tardy argument, but it was on day 26 of the 28  
17 days allotted by the Court. So that argument, frankly, doesn't  
18 carry any weight. I appreciate Mr. Green will likely say:  
19 Well, it's tardy under the Tolling Agreement.

20 The Tolling Agreement doesn't have a tardiness  
21 provision. It says -- that's why we're in this kind of  
22 amorphous state of what happens when they're late. And what the  
23 core Defendants have created is this order to show cause  
24 finality process: Respond or your gone.

25 Plaintiff responded. Sufficiency of the records

1       should not be disputed. And certainly here when we have an  
2       injury record, nobody is disputing her injury, and now we have  
3       an affidavit saying "I used this over-the-counter product," I'm  
4       befuddled at the opposition and, frankly, the case, we submit,  
5       should be removed from the order to show cause and not  
6       dismissed as Mr. Green seems to advocate in his filing.

7               Thank you.

8               THE COURT: Okay. Thank you.

9               Mr. Green.

10              MR. GREEN: Thank you, your Honor. K.C. Green for  
11       Procter & Gamble, but also on behalf of AZ in this one. It's  
12       not just P&G that's insisting that what we got here was  
13       woefully late and woefully inadequate.

14              From our perspective, your Honor, this case is frankly  
15       "Exhibit A" of how some of the Plaintiffs and their counsel are  
16       abusing the system here and thumbing their nose at the  
17       agreement they willfully signed.

18              To take a look at this plaintiff, she got nine months  
19       to investigate her claim through the Tolling Agreement. And  
20       what did she do? She did absolutely nothing. She files the  
21       complaint the end of January of 2019, and she checks the box  
22       after every single PPI in the complaint, plus the -- checks the  
23       box, "other." We still don't know what "other" is. But she  
24       checks every single box. She checks every single box after  
25       every defendant. So basically did nothing.

1           And then what does she do after that? She's got an  
2           obligation within seven business days for the Tolling Agreement  
3           to supply the proof-of-use and proof-of-injury information, and  
4           what does she do then for many months? Absolutely nothing.

5           We finally had the Defendants, all of the Defendants,  
6           including a bunch of defendants who it now appears this lady  
7           finally realized, whoa, I didn't take nine of them, I took  
8           one.

9           The Defendants have to analyze this case, move to  
10          dismiss it. Ultimately the Court issues a show cause order, at  
11          which point we're already 13 months past when this information  
12          was to have been supplied in order to be compliant with the  
13          Tolling Agreement. That Order by the Court required her to,  
14          quote, explain why her case should not be dismissed for failure  
15          to comply with the parties' Tolling Agreement, unquote.

16          And as we sit here today she has still not explained  
17          why her case should not be dismissed for failure to comply with  
18          the Tolling Agreement. She clearly failed to comply with it,  
19          and she's given that no explanation as to why it took her 14  
20          months and a motion to dismiss and a show cause order for her  
21          to do anything, virtually anything. I mean, she didn't file an  
22          affidavit saying: I was abducted by aliens for the last 12  
23          months and therefore couldn't collect this information.  
24          Nothing. We have no explanation as to why it took so long; and  
25          on top of that, why it remains well off base in terms of what



1 is required by the Tolling Agreement.

2 The submission that Plaintiffs made, as I say, offered  
3 nothing to justify the failure to comply with the Tolling  
4 Agreement. They offered absolutely nothing on eight of the  
5 PPIs she originally claimed that she took. I mean, it just  
6 baffles -- it boggles the mind how she could file a complaint  
7 and say she took nine PPIs and then turn around and say 14  
8 months later, I took one.

9 The submission -- now she said she took one PPI rather  
10 than the nine. And seriously, it took nine months of tolling  
11 and 14 months of failing to comply to come up with that?

12 And as to the one PPI that she now claims she used, we  
13 get no record at all. There's no written record. So that part  
14 of the Tolling Agreement is not complied with.

15 Mr. London is absolutely correct that there was an  
16 exception if you made great strides and great efforts to try  
17 and get records and were unable to do so, you could put in an  
18 affidavit. But that affidavit, the Tolling Agreement makes it  
19 very clear that that affidavit need to -- at a very minimal,  
20 the language is that at a minimum, that affidavit must contain  
21 the following five points. And this plaintiff, that affidavit  
22 picks two of the five required points in the affidavit  
23 requirement for the Tolling Agreement.

24 The three that she missed, one of which seems to be an  
25 awfully easy one to hit if any effort had been made whatsoever

1 is the affidavit must say at what store or pharmacy the product  
2 was purchased. That's not in the complaint.

3 THE COURT: Okay. You know what, let me just jump in  
4 for a second. All of this is in your papers. Correct?

5 MR. GREEN: Most of it, yes.

6 THE COURT: Is there anything that you would like to  
7 say that's not in your papers?

8 MR. GREEN: Well, I will add, that the point the  
9 Plaintiffs have raised in their -- I don't know what you want  
10 to call it -- there's a response to a show cause order or reply  
11 I guess, their last filing raised the, frankly, ridiculous  
12 suggestion that the fact that after 14 months and a motion and  
13 we file our response, Plaintiffs finally say -- well, even  
14 then, Plaintiffs' counsel and plaintiff did nothing to dismiss  
15 the Defendants whose -- admits the products weren't taken, it  
16 took the effort by the Defendants to get that dismissal. But  
17 somehow from that process in their most recent filing,  
18 Plaintiffs are arguing that the fact that the other defendants  
19 took dismissals somehow validates what was submitted by this  
20 plaintiff, which is just beyond belief. Because the  
21 Defendants, those defendants shouldn't have been riding in the  
22 case for 14 months while this lady did nothing. But it  
23 certainly doesn't validate the inadequate -- or the adequacy of  
24 what she submitted. Because what she submitted is clearly well  
25 off base in terms of what is required. And I would venture to

1 say that a call from the co-defendants that have been  
2 dismissed, they would all agree that what plaintiff submitted  
3 here was woefully inadequate as well as late. And for those  
4 reasons we think this lady, her claim should also be dismissed  
5 per the show cause order.

6 THE COURT: Thank you.

7 MR. HINDY: Judge, if I could add a few points because  
8 I don't want it to get lost in the weeds here.

9 THE COURT: Okay.

10 MR. HINDY: The Weese case is pretty representative of  
11 many, many cases in this MDL, and that is, many cases were  
12 filed when they really knew nothing about them. As Mr. Green  
13 pointed out, I think she checked off boxes that she used every  
14 one of the PPIs and sued all the Defendants. And that scatter  
15 shot approach has really hurt and stalled this litigation in  
16 some ways. It's more than two years later now we've learned  
17 that she only ingested one of the PPIs, Prilosec,  
18 over-the-counter.

19 And that's really the "dirty little secret" of this  
20 MDL. When a significant number of plaintiffs filed their cases  
21 they really knew nothing about them. And now we've wasted two  
22 years, or 15 months on getting to the bottom of this. It took  
23 a motion to dismiss, an order to show cause -- you know, an  
24 argument, many months of delay therein, finally an order to  
25 show cause entered by your Honor. And now, of the 68 cases on

1       that order to show cause, 67 were dismissed but this one  
2       remains, and this one should be dismissed.

3               If you look at what the Tolling Agreement provides for  
4       a PPI user affidavit, it's significant pieces of information.  
5       Here, all she did was say: I used it and/or I recall taking a  
6       PPI, and/or recall being prescribed a PPI by my doctor, and/or  
7       recall purchasing it. So it's the qualifying statements  
8       without any indication of what she actually did to research or  
9       review or the due diligence she did to actually determine what  
10      it was she took.

11              And just to correct one misstatement. The Tolling  
12      Agreement did require seven days after they filed their  
13      complaints off the Tolling Agreement, that they provide  
14      proof-of-use/proof-of-injury, and if they didn't they were  
15      subject to motions to dismiss or they were subject to  
16      dismissal, which is why we moved to dismiss in 5,000 of these  
17      cases and why a significant amount, I think it's around 4,000,  
18      maybe 4500, still remain on that original motion to dismiss  
19      list.

20              So if we have to go through this exercise with every  
21      one of those who either filed tardy proof-of-use or  
22      proof-of-injury or still had gaps in what they have filed that  
23      are insufficient with the Tolling Agreement, we'll be at this  
24      for years, literally years. And I think we need to get on this  
25      and dismiss those from the lawsuit. It's cheapening the

1 lawsuit to those who are rightfully in it with the proper  
2 documentation, and it hurts all the other Plaintiffs, it hurts  
3 the Defendants in terms of spending time, and certainly it  
4 hurts the Court in having to deal with it and listen to us go  
5 on and on about it over and over.

6 Thank you.

7 THE COURT: Okay.

8 MR. LONDON: Your Honor, it sounds like the woes of  
9 the world between counsel there.

10 So we're here to address the Weese case. And, you  
11 know, Mr. Green spoke many times, but clearly, clearly,  
12 clearly. I remember years ago a judge told me that when  
13 someone says "clearly" it usually ain't clearly. It ain't  
14 clear. And I'm not sure where to address Mr. Green's  
15 arguments. I don't really intend to. I don't believe he  
16 articulated much.

17 With respect to what Mr. Hindy indicated, he is  
18 correct that there are a lot of motions to dismiss. And where  
19 he's incorrect is that many of these are being addressed by the  
20 Court to the order to show cause process. This litigation  
21 hasn't been stalled one iota because of Ms. Weese's case or any  
22 of these cases. The litigation has moved on. These are  
23 case-specific issues. These have not impacted anything. But  
24 that's not really the crux of this argument here. This is the  
25 Weese case. And 67 other cases were dismissed properly.

1 I, frankly, can't fathom the bellyaching, and I don't  
2 think the Court should hear this. And Ms. Weese complied. I  
3 was surprised to see Mr. Green's objection. But she complied.  
4 She gave them -- this is precisely why you gave them the order  
5 to show cause. In 14 or 18 days they got 67 dismissals. Ms.  
6 Weese gave the information.

7 And I think what underscores the disingenuousness of  
8 their argument is that they're arguing tardiness -- she  
9 complied with the Court's order -- and they're arguing  
10 insufficiency. They know that the affidavit suffices for  
11 over-the-counter records.

12 So with that, your Honor, I think on the Weese case we  
13 think the case should remain. She complied with the Court's  
14 Order to Show Cause and with the Tolling Agreement.

15 Thank you.

16 THE COURT: Thank you. Obviously I'm not deciding  
17 this today. I appreciate the arguments that have been  
18 presented, but I am going to take a look at it.

19 And with that, are we able to move on?

20 Okay.

21 MR. HINDY: One point, and that is the 67 cases that  
22 were dismissed should never have been filed in the first place.  
23 And that has wasted time. That's what's stalling -- it wastes  
24 defendant time. Maybe Mr. London doesn't appreciate that, but  
25 it wastes our time in reviewing what has been filed, the

1       insufficiencies in those cases. So of the 67 of the 68 cases,  
2       none of them should have been filed.

3               MR. LONDON: Your Honor, we actually don't dispute  
4       that fact. As the Court may recall, and the Court will  
5       certainly recall, Plaintiffs were trying to negotiate at the  
6       time of a Government shutdown an inability to file cases. And  
7       we thought we had an understanding with defendants -- and I  
8       think we all know certain defendants pooled the wool out on  
9       that situation -- we hoped to delay those filings so we can  
10      gather more. But the Defendants would not give reprieve so we  
11      could gather more records. That was the Defendants. These  
12      filings were at their doing. So we have gone far afield of Ms.  
13      Weese's claim who complied with the Court's Order to Show  
14      Cause.

15             So Mr. Hindy can try and rewrite the history, but when  
16      these cases were filed we talked about bundling, we talked  
17      about the burden on the Court's staff, we begged and asked the  
18      defendants for a reprieve. Some defendants on this call  
19      agreed. Other defendants said they agreed and pulled the wool  
20      out -- the rug out from the Plaintiffs at the last minute when  
21      we had all relied on what we thought was an agreement.

22             So I don't think Mr. Hindy should take the time to try  
23      to rewrite history, nor should he do it on one specific case,  
24      the Jeanie Weese case, where she complied with the Court's  
25      Order to Show Cause. Hopefully now we're done.

1           THE COURT: I think with that, let's move on. As I  
2 indicated, I want to look at the application. We're not going  
3 to be deciding anything today. I understand what your  
4 arguments are but I would like to look at it myself and go back  
5 to what you submitted in writing. So there's still opportunity  
6 here to discuss this, but I think I've received enough today.

7           Is there one last thing?

8           MS. FISHER: Your Honor, I apologize because I know  
9 you don't like to keep talking about this and I don't either  
10 but I could not live with myself on behalf of my client if I  
11 did not say one more thing here, which is to, number one,  
12 clarify that the tardiness issue is really irrelevant. That  
13 was just something to point out that after all of this period  
14 of time you would think that whatever was going to be produced  
15 would be compliant. And what was produced we're not talking  
16 about insufficiency as we're hearing, it was not compliant. It  
17 was an affidavit that didn't comply.

18           And as Mr. Hindy said -- and I think why we're so  
19 exercised about this -- this one case, while this one case is  
20 emblematic of really a large problem with this entire docket of  
21 14,000 Plaintiffs. If you look at Mr. London and Ms.  
22 O'Connor's cases, they have over 1500 cases in this MDL, and  
23 taking aside the tolling cases, only 10 percent of them are  
24 Stage 1 substantially complete.

25           And so for reasons like that being filed, not only is



1 it a burden on the Court to address these issues and we've  
2 spent 30 minutes talking about this one case today and on the  
3 Defendants, but we're talking about each Defendant's patient's  
4 safety and global regulatory departments who are having to go  
5 through each of the new complaints --

6 THE COURT: You know what, I understand the arguments  
7 in terms of burdens and issues on both sides. I get it. I  
8 think we have to move on. All right.

9 And I appreciate the concern here, but given the  
10 length of our agenda for today, I think we can move on from  
11 this issue. As I indicated, I'm going to take a look at the  
12 papers, I'm going to reflect upon what you said. Everyone has  
13 had a chance to speak on this. I think, let's move on. All  
14 right.

15 MS. FISHER: Thank you.

16 THE COURT: Thank you.

17 As far as the next issue on the motions to withdraw.  
18 We had received several motions to withdraw as counsel, and we  
19 held on to them because there was no indication on them that  
20 the plaintiff had additional days to find new counsel or go  
21 pro se. I believe today we received in new drafts, new  
22 versions of those orders. And I don't see there is any issue  
23 with them, so I planned on granting those applications to  
24 withdraw.

25 Does anyone have any issue on those?

1 MS. FISHER: No, your Honor, I think those have all  
2 been non opposed.

3 THE COURT: Great. The next one is Volume and  
4 Viability of 2020 Complaints.

5 MS. FISHER: Yes, your Honor. I think this is a good  
6 segue of where we were on the tolling issue. The 2020  
7 complaints are a subset of a larger issue. We have the  
8 litigation, the MDL, that's been pending for four years, and as  
9 we've said the vast majority of the plaintiffs still cannot  
10 demonstrate that they either took the products alleged or  
11 suffered the alleged injury.

12 So it's disconcerting to suggest that we see here just  
13 in 2020 that there are now almost 14,000 cases in this MDL,  
14 almost 1,000 of which have been filed just in the last couple  
15 of months. So we have cases where there have been no product  
16 ID, cases where there has been no proof-of-injury. We have 247  
17 cases against AZ alone that are duplicate cases, some are  
18 triplicate cases that we can't get this information despite  
19 weekly requests from the Defendants.

20 The problem with this is that the way the protocol and  
21 the CMOs are structured, these cases are not vetted for filing,  
22 not all of them, but a lot of them, and they remain unvetted  
23 and then we have to deal with these cases, the Defendants and  
24 the Court, in any number of ways through an agonizing now  
25 two-year long tolling process. And as I said, we just spent

1 over 30 minutes on one tolling plaintiff. No Plaintiff Fact  
2 Sheet Notice Letters, their motions to compel, their months and  
3 months of negotiations on a no-plaintiff fact sheet CMO, a yet  
4 to be negotiated Stage 2 CMO or no injury CMO, statute of  
5 limitations motions, and so on and so forth.

6 For the cases outside of 2020, your Honor, of the 7200  
7 cases that were filed from the inception of this litigation  
8 through 2019, and that are not subject to the tolling motion to  
9 dismiss, only 28 percent are Stage 1 and substantially  
10 complete. And while some cases are getting dismissed, and we  
11 appreciate that, the docket is continuing to fill back up at an  
12 alarming rate. The cases that we know, some of which are time  
13 barred, cases that were on monthly tolling lists from one-year  
14 states, one-year statute of limitation states that are now just  
15 being filed and are clearly time barred, cases that don't have  
16 proof-of-use because we're getting requests directly to  
17 Defendants' safety departments for proof-of-use records the  
18 same day a case is being filed, complaints that have no date of  
19 injury; and of course proof-of-injury is not required as part  
20 of the current PFS.

21 So back when the original Plaintiff Fact Sheet was  
22 negotiated and the original CMO was entered, there were only a  
23 couple hundred cases and so the process was not one that could  
24 necessarily work. A full-blown long form Plaintiff Fact Sheet  
25 produced months and months down the road was not necessarily

1       problematic. However, with 14,000 cases now in this MDL, we  
2       really need an earlier, more straightforward protocol that we  
3       can employ at the outset of each case to separate the wheat  
4       from the chaff.

5               Let me just give you one specific that I think is  
6       really compelling and then I can tell you what we would propose  
7       we do to fix this going forward. Of the Plaintiff firms who  
8       have 80 percent of the docket, for their cases that have  
9       reached the PFS deadline and are not part of the tolling  
10      motions to dismiss, the percentage of Stage 1 substantially  
11      complete cases range from a mere 6 percent to 18 percent.

12             So we would like your Honor's cooperation and  
13      encouragement to meet and confer with the PSC on a process  
14      whereby at the outset of each case proof-of-use is required,  
15      date of injury and a proof of injury production in the form of  
16      perhaps a short plaintiff profile form or some other process  
17      the parties can agree to. And I think that's something that we  
18      can start talking about with the PSC now, and we would ask for  
19      a deadline to meet and confer on that and then update the Court  
20      on the status of that meet-and-confer.

21             THE COURT: Okay. Anyone on this?

22             MR. PENNOCK: Paul Pennock.

23             I'm not sure what issues the Court would like me to  
24      address. This one that's just been raised here at the end is  
25      some type of new process. While I know this may have been

1 discussed briefly with Mr. Katz and maybe only in the last day  
2 or so, we've not discussed it on our side yet. Obviously we  
3 can talk with them about it, but there's just a lot to unpack  
4 from what Ms. Fisher was just laying out on the table.

5 The bottom line is, this drug does not have a warning  
6 on it for chronic kidney disease. If they want to stop chronic  
7 kidney disease filings, they should go and advise their clients  
8 to put a warning on it instead of meddling with the FDA to  
9 prevent a warning, which is what they've been doing for two  
10 years

11 There are people that are going to continue to be  
12 diagnosed with chronic kidney disease that we believe was  
13 caused by this drug. We will always, and always have had, the  
14 problem of healthcare providers not cooperating with  
15 plaintiffs' lawyers to provide records in the time frames that  
16 we need to get them. That's nothing new. It's been going on  
17 for decades. There have been statutes that have been enacted  
18 to require healthcare providers to act upon those requests,  
19 even what the costs of those records should be. So that's  
20 nothing new. It's difficult. We stand ready to defend our  
21 efforts of due diligence in what we have done in these cases,  
22 and some of them might not look at strong in terms of that as  
23 others but the vast majority will.

24 But the bottom line is that there are new and  
25 additional plaintiffs in cases that will be filed and it's

1 going to continue. I mean, I don't know what else to tell them  
2 about that.

3 As far as issues concerning why are these cases being  
4 filed now three years into this MDL? Many of them were  
5 retained only in the last year or year and a half or even in  
6 the last months. These cases, again, these people are being  
7 diagnosed and then seeking counsel. Also, there are obviously  
8 states that have much longer statutes of limitations than  
9 others. For example, Florida has a four-year statute of  
10 limitations from discovery. So there are all sorts of reasons  
11 why these cases are being filed now and they will continue to  
12 be filed.

13 In terms of the duplicate and triplicate cases, that  
14 is the first I've heard that. That doesn't mean they haven't  
15 raised it with someone and it just hasn't reached me. I'm  
16 happy to personally take that issue on and find out what's  
17 going on on that because I've already sent an email on it, and  
18 that certainly raised my eyebrow and I want to find out what's  
19 happening there. That's an example of a problem that can and  
20 should be fixed expeditiously. But there will be new filings.

21 I think that the process that Mr. London spent  
22 probably two months or more negotiating regarding fact sheets  
23 at the beginning of this litigation is adequate to the task and  
24 is really quite similar in most ways to fact sheet processes  
25 that have happened in other MDLs.

1           So, if the Court wants me to address something  
2       specific, I can do that.

3           THE COURT: No, I think that that's fine. Obviously  
4       you haven't had a chance to discuss any of this. I would  
5       imagine you are able to put your researches together to  
6       determine whether there's anything to be done with those and  
7       how to address them.

8           In terms of any of the other issues, I suppose you  
9       could have a meet-and-confer on this issue. But what I'm  
10      hearing is that there are just new cases arising at this point  
11      in time and that they are getting filed. So go ahead with your  
12      meet-and-confer on this, but I'm not sure what the real result  
13      is going to be here on this aside from the actual duplicates,  
14      which I think you should address.

15          MR. PENNOCK: I will, Judge, I will address that. And  
16      on the other issues I will take the lead with Ms. Fisher in  
17      addressing these in the coming month.

18          MS. FISHER: Thank you, your Honor. And thank you,  
19      Mr. Pennock.

20          We will certainly work with him on the duplicates. I  
21      do want to clarify that this has not been raised with Mr. Katz.  
22      To the extent he's getting that email from his side, this is  
23      not something that we talked about. That was limited to just  
24      addressing the plaintiffs who have not provided a Plaintiff  
25      Fact Sheet. But I do think that that process is telling, the

1 fact that we have to amend the CMO and have a process for  
2 plaintiffs who have not provided a Plaintiff Fact Sheet for, in  
3 some cases, two or three years. You know, that's the issue.  
4 And when we have this large of a volume of cases, a long form  
5 Plaintiff Fact Sheet that is not required until after service  
6 and after a defendant's notice of appearance, and then even  
7 then 90 days, that was a reasonable amount of time. But now  
8 with this many cases there needs to be a way for us to get some  
9 information, some basic information about the viability of the  
10 case at the beginning and perhaps to have a short form  
11 Plaintiff Fact Sheet at the beginning, and then if the  
12 plaintiff is Stage 1, then a long form Plaintiff Fact Sheet is  
13 required.

14 I'm just following here some of the things we can talk  
15 about. But I think Mr. Pennock also mentioned in some cases  
16 these individuals have just retained counsel. Retention of  
17 counsel information might be helpful for us to evaluate some of  
18 these cases as well. We're not disputing that some of these  
19 are viable cases, but as your Honor had seen through the  
20 tolling process, a large number of these cases are not viable  
21 and should not have been filed, or at least not against some  
22 defendants against whom they were named.

23 So we would like to use the next couple of months, the  
24 next six months to get a process in place that vets these cases  
25 at the outset so that your Honor is not having to deal with the



1 viability of cases that have been filed three, four years down  
2 the road. Because, for example, these new cases that have been  
3 filed in 2020, it's possible that we might not get Plaintiff  
4 Fact Sheets for those until actually 2022.

5 THE COURT: Okay.

6 Let's move on to the next issue. I think it's PSC's  
7 Motion to Quash Non-Party Discovery Request.

8 Are you going to hold on for another day, is that it?

9 MR. THOMPSON: That's correct. And just so the record  
10 is clear, counsel for Lucy Business Service has been  
11 unavailable to date. We did reach out to counsel, and the name  
12 is Wailes, George Wailes, W-a-i-l-e-s.

13 THE COURT: Yes.

14 MR. THOMPSON: And Mr. Wailes has indicated that he  
15 will be available for the May 20th CMC, and so we can recheck  
16 the issue on the calendar at that time.

17 THE COURT: Okay. That sounds fine to me. Let's move  
18 forward then.

19 Now, the next issue is Effectuation of Dismissal of  
20 Novartis Entities.

21 And I believe we have a draft of a proposed form of  
22 order. Any issues on that?

23 MR. REISSAUS: Yes, your Honor. This is Andrew  
24 Reissaus for the Novartis entities.

25 I don't think there are any issues for the Court to

1 address right now. We have agreement from the PSC. We've been  
2 working with Mr. Grand on this to the dismissals. There's one  
3 paragraph in the draft that we sent the Court that deals with  
4 the procedure for the dismissals that the PSC is reviewing. My  
5 hope is that we can finalize that very soon and get a final  
6 order to you maybe as early as the end of the week, perhaps  
7 next week.

8 THE COURT: Okay. That sounds fine.

9 Anyone on that issue?

10 MR. GRAND: Yes, your Honor.

11 That is correct, we are reviewing the order. We hope  
12 to get that to the Court. I think we may need up to 30 days to  
13 ensure that the list is accurate because that's not something  
14 the PSC can do on behalf of other Plaintiffs. We will have to  
15 sort of circulate that list to all law firms that are  
16 implicated --

17 THE COURT: Yes.

18 MR. GRAND: -- to make sure it's accurate. But we  
19 would expect to at least have an order, the order finalized  
20 within seven days.

21 THE COURT: Okay. That sounds fine, so we will be on  
22 the lookout for it.

23 And if there are any issues we'll be happy to deal  
24 with them, but otherwise it sounds like you are both working  
25 through this.

1           Now, Update on Discovery.

2           And there are a variety of discovery matters. The  
3 first is on deposition scheduling. So let me hear from who  
4 wants to be heard on that issue.

5           MS. O'CONNOR: Your Honor, Stephanie O'Connor.

6           As you know, there are a number of bullet points under  
7 the Update on Discovery and different folks will be addressing  
8 different issues. I just want to say at the outset that I  
9 think that bullet point number two that deals with remote  
10 depositions is somewhat subsumed in updating deposition  
11 scheduling which I would like to address briefly before others  
12 address this too.

13          THE COURT: Go ahead.

14          MS. O'CONNOR: As your Honor is aware, I brought to  
15 the Court's attention the concern on the part of the PSC for  
16 some time, I would say the last several CMCs I've raised the  
17 issue of recalcitrance in rescheduling depositions primarily  
18 regarding AstraZeneca. I thought that in order to frame the  
19 rest of the discussion about depositions some statistics might  
20 be in order.

21          AstraZeneca has not produced a witness at deposition  
22 since December 4th, albeit notices have been issued for dates  
23 far sooner than anything having to with COVID.

24          And with regard to Takeda, we've had one deposition  
25 this year in January of one witness. There have been no

1 depositions aside from one, and I think there's been only one  
2 deposition this year in late February of P&G. So here we are  
3 late April and we've had two depositions this year with an  
4 opportunity to have done more much before the COVID-19  
5 situation, which will be addressed separately.

6 I just want the Court to be aware that this is where  
7 we are, and the other concerns will be addressed as well.

8 THE COURT: All right. Thank you so much.

9 Who else wants to join in and respond?

10 MR. DOUGLAS: Matt Douglas very briefly on behalf of  
11 AstraZeneca.

12 THE COURT: Yes.

13 MR. DOUGLAS: We had 12 depositions scheduled to occur  
14 in April and May and then a couple into June before COVID-19  
15 hit. So I do think that after the conversation we had with the  
16 Court, I believe it was in February, we proposed dates, we had  
17 agreed upon dates and locations for those 12, and then the  
18 global pandemic hit. So I don't believe that there's validity  
19 to that "recalcitrant" issue, but I don't think there's  
20 anything for the Court to address there.

21 THE COURT: Let me just talk about the schedule moving  
22 forward. Have you folks really spoken and agreed on a path for  
23 moving forward? Because of course we have a schedule in place  
24 and I would like to keep it as close as possible to it. So to  
25 avoid anything disruptive, that would be disruptive to our

1 schedule I would like to build in a plan so we know we're going  
2 to move forward with some degree of deliberateness.

3 Who wants to talk about that?

4 MR. GRAND: Jeff Grand.

5 I think part and parcel of that plan is getting an  
6 order in place for the remote depositions because that really  
7 is the only way to keep us moving forward. And the order that  
8 the PSC proposed does not put anyone at risk or endanger  
9 anybody's safety. As we noted in our opposition papers to  
10 Defendants' motion for a stay, we will defer the deposition of  
11 any employees or former employees who were involved in  
12 developing treatments for COVID-19. We will defer the  
13 depositions of any treating physicians of the Plaintiffs  
14 because we understand the medical community is really taxed  
15 right now. But there are witnesses who aren't involved in such  
16 work whose depositions should continue as scheduled. There's  
17 marketing personnel, there's sales reps, there's plaintiffs and  
18 their family members.

19 But Defendants, they adjourned 11 witnesses in April.  
20 They're suggesting now in their motion for a protective order  
21 to adjourn another eight. That's 19 witnesses. And,  
22 frankly -- and there's been no commencement on depositions of  
23 Plaintiffs or their family members which would be required  
24 under our bellwether discovery plan.

25 And we believe, frankly, that we're going to be living

1 in this world now for several more months. Because even if  
2 some restrictions start to be lifted, there are going to be  
3 attorneys, there's going to be witnesses who are not  
4 comfortable traveling, who are not comfortable being in another  
5 room with somebody. And certainly even if things do sort of  
6 begin to open up again there are going to be all types of  
7 social distancing restrictions in place.

8 So our plan accounts for all of that. And these are  
9 difficult times. And the fact that something is inconvenient,  
10 the fact that something is a little harder to do than the way  
11 we're used to doing it should not be a basis for basically  
12 grinding this litigation to a halt. We can move forward with a  
13 lot of depositions if we can take them remotely.

14 Defendants, we proposed this twice to Defendants.  
15 Frankly, we proposed it right before even the core discovery  
16 period started and we've been -- this has been rejected over  
17 and over again which is why we submitted the proposed order to  
18 your Honor. But we need to get this in place. And, frankly,  
19 even if your Honor was inclined to grant their motion to stay  
20 this litigation until May 15th, we would still need a remote  
21 deposition order in place because we've got to get caught up  
22 here and we've got to take the depositions we're supposed to be  
23 taking during this time period.

24 THE COURT: Okay. Anyone?

25 MR. THOMPSON: Your Honor, Craig Thompson for Takeda

1 and Abbott. I'll be addressing the motion for a protective  
2 order.

3 Let me start by answering your question directly. No,  
4 we've not agreed upon a path moving forward. We have invited  
5 Plaintiffs to discuss it and we've not been able to have a  
6 meet-and-confer on the issue.

7 THE COURT: Okay. You know what, let me stop right  
8 there. Shouldn't we be doing that? Because obviously it's in  
9 everyone's best interest to move this forward, to stick to our  
10 plan. We worked diligently to arrive at the plan. And I  
11 realize the circumstances are unprecedented with the COVID-19  
12 virus and we are all addressing that and trying to determine  
13 how to best move forward while still addressing those issues.  
14 But I would imagine that there is some opportunity for sitting  
15 down and determining which witnesses could have their  
16 depositions go forward first who are not directly impacted, and  
17 you could move from there. And I think at this point most  
18 litigation, most large-scale litigation is going forward with  
19 providing some opportunity for videotaped depositions in order  
20 to move their cases forward.

21 So with that in mind I think it would be a proper time  
22 for both sides to get together and sort of structure how the  
23 depositions are going to proceed.

24 MR. THOMPSON: If I might, your Honor, just in advance  
25 of our most recent Protective Order. We don't disagree with

1       that and, in fact, that's part of our request in our motion and  
2       it's a very simple request, your Honor, at least in part with  
3       what you're saying. The postponed depositions that are  
4       currently scheduled in May, they order us to meet-and-confer by  
5       May 15th, and then --

6               THE COURT: Here's the question though. Why would we  
7       have to defer all deps through May 15th? Why wouldn't be able  
8       to start taking deps as a matter of this week? I mean, to the  
9       extent the prep has already been done, why wouldn't they be  
10      able to be placed on the calendar and why wouldn't they be able  
11      to move forward?

12             If you are able to do videotaped depositions, it seems  
13      to me that everyone should be able to address the schedule and  
14      move forward. At this point then that would be talking about  
15      almost three weeks of a standstill.

16             MR. THOMPSON: Let me address that, your Honor. We're  
17      not talking about putting the litigation to a grinding halt,  
18      that's simply untrue. What we are doing is looking at the  
19      circumstances that you indicated, your Honor, are  
20      unprecedented, I think everyone certainly understands that, and  
21      looking at how best to move forward.

22             I'm reminded, your Honor, at the beginning of this  
23      litigation when the topic of dismissals was on the front  
24      burner, I recall your Honor saying both off and on the record  
25      that you don't just see cases or case numbers but you see



1 people. And all we're asking you to do today, your Honor, is  
2 to stay consistent with that perspective at least and not just  
3 see depositions of people.

4 THE COURT: Let me just jump in again on that. And  
5 obviously that makes sense and I stand by that position. But  
6 at the same time, if certain individuals could be deposed now  
7 and they don't have any compelling circumstances for not taking  
8 their depositions at present, why wouldn't be able to structure  
9 the line of depositions in a way that we would be able to  
10 engage with people who can go forward with their depositions  
11 during this period; and those who have some difficulty,  
12 obviously we're going to structure it so that they're not  
13 impacted at this point?

14 MR. THOMPSON: That assumes that everyone can go  
15 forward immediately. That also assumes that preps have taken  
16 place. And, in fact, not all preps have taken place.

17 We have had, your Honor, with respect to a former  
18 employee trouble getting in touch with them, and some may  
19 simply say to us: Look, I'm not prepared to do anything at  
20 this time. I'm nervous, I'm anxious, I'm litigation-naive.  
21 There are any number of things that we have to continue to  
22 address over the next several weeks, and we will continue to do  
23 that.

24 Today's issue, for example, is Exhibit A. Just this  
25 call we've had issues with people connecting, we've had your

1 Honor unfortunately drop off for a little bit of time, Walt  
2 could not hear some of the things. I mean, there are some  
3 logistical concerns we have to address, there are safety  
4 concerns we have to address, there are personal concerns we  
5 have to address. Just today, as Mr. Brown indicated earlier,  
6 his 14-month-old was looking in the window at him. We've been  
7 able to work remotely because we've been able to control, in  
8 part, our space, but there are times, three times just today  
9 your Honor, a 9-year-old, a 14-year-old and a 16-year-old have  
10 come in for various reasons, and my sense is that my experience  
11 is not uncommon, it's probably more common than it is uncommon.

12 I just want to focus on and make sure we're focusing  
13 on all the people involved and that we're adjusting accordingly  
14 for that we are in unprecedented times, and we need to make  
15 sure that when we have that conversation, that we have that  
16 conversation with the folks in mind, with the people in mind.

17 THE COURT: Let me --

18 MR. THOMPSON: There are logistic concerns that were  
19 raised in my papers --

20 THE COURT: Let's talk about that though, because  
21 obviously videotaped depositions nothing new. Videotaped  
22 depositions take place in circumstances not involving our  
23 current crisis. So just as a framework, any issue with respect  
24 to those?

25 MR. THOMPSON: Videotaped depositions do, in fact,

1 take place. But I will say, your Honor -- and this is another  
2 strong, significant concern of ours -- usually counsel  
3 defending those depositions are in the room with the witness.  
4 And as we noted in our papers, that's an extremely important  
5 point, one that I commend your Honor's attention to a  
6 Declaration submitted by Chris Allen who is also on the line  
7 from Takeda. So in those videotaped depositions there is  
8 significant contact between the defending attorney and the  
9 witness prior to the prep as well as during the course of the  
10 deposition. So we certainly don't object to the fact that --  
11 or argue the fact that videotaped depositions take place, but  
12 that's in a different context.

13 THE COURT: Well, you know what, I do know my brethren  
14 in similar cases have been authorizing videotaped depositions  
15 to go forward. And obviously everyone is mindful that certain  
16 individuals are impacted. They're not going to be going  
17 forward at this point in time. But if we have other  
18 individuals who can be deposed, I certainly don't think that we  
19 should halt the litigation at this point in time and do a wide  
20 scale stay here. There's got to be some way that we  
21 accommodate videotaped depositions, allow them to proceed.

22 I'm just going to draw an example. I mean, we are  
23 doing sentencings and pleas via videotape at this point in time  
24 in criminal proceedings. There's got to be a way to have this  
25 schedule move forward.

1           MR. GRAND: We're not sure who you wanted to response  
2 from, your Honor.

3           THE COURT: Let's hear a response from the Plaintiff,  
4 please.

5           MR. GRAND: I think Mr. Pennock had something to say,  
6 but I want to make it clear that --

7           THE COURT: I'm sorry. Who is speaking now?

8           MR. GRAND: This is Jeff Grand. I apologize.

9           THE COURT: Go ahead.

10          MR. GRAND: I want to make it really clear that their  
11 motion does not say: Let's talk about doing remote  
12 depositions. Their motion says: Let's wait until May 15th.  
13 Let's take down all depositions for May, and then on May 15th  
14 we'll talk about whether we're going to have to take down more  
15 depositions. So they have flat out been opposed to remote  
16 depositions, and in their papers they say they're flat out  
17 opposed to remote depositions.

18          But I would note that during this very phone call that  
19 we've had today, another order just came down ordering remote  
20 depositions over defendants' objections, because courts are  
21 recognizing that this is a viable way to move forward. And I  
22 know Mr. Pennock has something to say, but I can also tell you  
23 that Mr. Overholtz who is on the phone has done remote  
24 depositions prior to COVID-19 and he can speak to the  
25 technology and security of this. We've seen several

1 demonstrations over the last couple of weeks as well.

2 THE COURT: Go ahead.

3 MR. THOMPSON: If you're asking for my response, your  
4 Honor, I do just want to reemphasize that we are not in any --  
5 this is Craig Thompson -- in any way asking for this litigation  
6 to come to a screeching grinding halt. We're not. There is a  
7 request for a stay in the proceedings, a very brief stay for  
8 the depositions scheduled in May.

9 I can let you know, your Honor, that with respect to  
10 the deposition of a Takeda witness for April, we've already  
11 rescheduled that for June. So those conversations that we were  
12 talking about in our motion are taking place. We're not  
13 talking about putting anything on hold or grinding the  
14 litigation to a halt. We're talking about putting a pause in  
15 the litigation right now while we adjust for this and start  
16 talking about how these depositions can, in fact, move forward.  
17 That's what we said in our papers. Not let's just wait until  
18 May 15th and then talk whether we can do remote depositions. I  
19 don't think --

20 MR. PENNOCK: Saying that it's not a halt and saying  
21 it's a pause doesn't mean it's not a halt. We've had, I don't  
22 know, how many multiple depositions, many of which, two or  
23 three of which I was taking scheduled for April. They pulled  
24 them down unilaterally. Now at that juncture we didn't raise a  
25 stink about it. We could have proceeded with these remotely at

1 that time. Everything was in place with the court reporters to  
2 do it. This is not magic. It's not rocket science. It's easy  
3 to do these depositions remotely, as Mr. Overholtz can tell  
4 you. That's number one.

5 So we've already been delayed for the entire month of  
6 April. Now they're proposing delaying us for the entire month  
7 of May. That is a two-month grinding halt or a two-month  
8 pause, whatever you want to call it. Nothing will be  
9 happening. These depositions are set, they are assigned,  
10 people are preparing them and we're ready to go. And we should  
11 proceed, as the Court said, with those witnesses that don't --  
12 that are not impacted in some way where the deposition should  
13 not proceed. And we should proceed with the ones in July, and  
14 we should reschedule -- I'm sorry in June -- and we should  
15 reschedule the April ones for July and we should just start  
16 this process of doing this.

17 If suddenly the sky collapses I'm sure they'll be back  
18 here saying: See, we told you, we couldn't do these remotely.

19 That's not going to happen. It's happened. These  
20 depositions are happening all over the country. These are the  
21 most sophisticated lawyers in the country on the other side and  
22 no one on the other side is going to be sitting in the  
23 deposition room kicking their client's leg on the answers.  
24 They don't need to be in the room and we should just proceed as  
25 scheduled in May.

1 THE COURT: Okay.

2 MR. THOMPSON: It's not true that the --

3 (Several Counsel speaking simultaneously.)

4 THE COURT: One at time, please.

5 Mr. Overholtz, go ahead.

6 MR. OVERHOLTZ: Yes, your Honor.

7 Just so I can let the Court know, we've been asked to  
8 address the issues of the feasibility, security and capability  
9 of doing these depositions in other MDLs that are ongoing right  
10 now. So we conducted a significant amount of work over the  
11 past several weeks since this pandemic started, including  
12 working very closely with the court reporting company that  
13 we're using in the PPI litigation, Golko, to ensure that these  
14 depositions proceed and create a product that is identical to  
15 what you would have if we were doing in-person depositions.  
16 You know, the fact that the documents are captured as they  
17 would be on site, that the documents are being captured just  
18 the way they would be at an in-person deposition.

19 We have had multiple demonstrations with Golko  
20 Technologies related to how the depositions will be recorded so  
21 that they record it in a secure manner, that the digital video  
22 feed is recorded just the same as it would be in the middle of  
23 an in-person deposition. We have worked with the vendor  
24 specifically with how documents get transferred to a deposition  
25 so that the witness can see the document on the screen just

1 like they would in an in-person deposition, but also that they  
2 and their counsel have full access to the complete document  
3 that's transferred, not across the table, but digitally as the  
4 deposition progresses so that they have full access to the full  
5 document if that become a necessity.

6 We've also worked with Zoom as well as Golkow on the  
7 security issues. And we make sure in drafting our protocol  
8 that those security issues that maybe someone raised that were  
9 in the news have all been addressed so that we have passwords,  
10 we have unique meeting IDs, we have waiting rooms that only  
11 those who should be in the deposition can see the deposition,  
12 all the recordings are made on-site where the videographer or  
13 the technician is and not over the cloud. And we also talked  
14 to them about making sure we can do checks before the  
15 deposition begins to ensure that we have the right connection  
16 feed, we have the right camera and the camera angle so that  
17 everything will go smoothly and that we can address any issues.  
18 And, of course, we're willing to work with the Defendants on  
19 issues related to particular witnesses related to particular  
20 technical issues that we have to get over, but we do believe we  
21 can move forward.

22 And as your Honor said, we had a hearing in another  
23 case recently and they're holding hearings in criminal matters  
24 where everybody is in remote locations, and those are being  
25 handled right now fine. And I've conducted several of these



1 Zoom depositions. The quality has never been a problem; and  
2 sometimes they simply just go a little smoother when everybody  
3 is not in the room together.

4 And so I think we can move forward now. And I can  
5 certainly address any other technical issues that the  
6 Defendants have or if the Court has any.

7 THE COURT: Thank you.

8 MR. THOMPSON: Craig Thompson.

9 Let me just say, all that sounds great. We've not  
10 been able to talk with or negotiate the details of the CMO,  
11 which is the second part of our request, as you know, and we do  
12 need some time to hear all this, to vet it ourselves of course  
13 and speak with our clients and the witnesses.

14 THE COURT: So why don't we do this. Why don't we  
15 have you folks talk about it. I don't know what type of  
16 committee you want for the Plaintiffs' side and the  
17 Defendants's side. But obviously I think you're going to need  
18 to discuss this to get to the finer points of it no matter  
19 what, but I do see that we're going to have to move forward  
20 with some version of this.

21 I appreciate that Mr. Overholtz has gone through and  
22 looked at some of the logistical issues and I think he can be a  
23 resource in terms of providing responses to the Defendants to  
24 the extent there's any inquiry as to how these are actually  
25 going to proceed or how they could proceed. But I think you're

1 going to have to talk about it and I think you're going to have  
2 to look at the schedule and determine which depositions can  
3 actually go forward first. And then for those individuals  
4 where they have special issues due to the crisis, obviously I'm  
5 going to be understanding and flexible on those.

6 MR. PENNOCK: This is Paul Pennock.

7 Could we have your direction to have an initial  
8 discussion with the Defendants tomorrow and follow up  
9 discussion on Friday? And then we'll have a good sense of how  
10 much more time they think they need to evaluate these, keeping  
11 in mind that I think Mr. Grand sent them our proposed order --  
12 well, he can speak to the date of that -- they've had it for a  
13 while. This has been going on all over the country. Their  
14 brother and sister attorneys all over the country have been  
15 doing these for major law firms. So could we just start this  
16 process tomorrow in a conversation?

17 THE COURT: Let's start with Mr. Thompson.

18 Are you able to do that or whoever would be on this  
19 particular team dealing with this issue, would they be able to  
20 speak tomorrow?

21 MR. THOMPSON: I'm certain that I can, but I can't  
22 speak for everyone. I do think that we may need some time to  
23 gather our thoughts, but I do think it's important to talk  
24 about it as soon as possible.

25 THE COURT: Okay.

1 MR. PENNOCK: Tomorrow, and then we can get the ball  
2 rolling.

3 THE COURT: I think that sounds fine.

4 Yes, go ahead.

5 MR. GRAND: This is Jeff Grand.

6 Your Honor, can part of that instruction be the  
7 Defendants identify for us which of the witnesses that have  
8 been taken down and which are still currently scheduled are  
9 actually active in developing treatments for COVID-19? Because  
10 it's not clear to us which ones are.

11 MR. BROWN: This is Arthur Brown.

12 May I speak, please?

13 THE COURT: Yes, go ahead.

14 MR. BROWN: Thank you.

15 We have incredibly short deadlines for a very  
16 important issue for the Defendants, of course, tomorrow. Let  
17 me just raise a few other points. You know, some of the  
18 materials that I use for my witnesses are in my office, and I'm  
19 going to have to go to my office to get some of those  
20 materials. And that's going to be a fun expedition for me into  
21 Manhattan because those aren't electronically organized in  
22 materials that I would normally use during a deposition  
23 preparation.

24 I appreciate the fact that we have depositions on the  
25 calendar. And we have blown deadlines on the tolling, but we

1 have a generic discovery deadline for September. No one is  
2 suggesting these obligations and deadlines can't be met. But  
3 suddenly we have to get these depositions done as soon as  
4 possible. And that sounds like that's what the Court is  
5 thinking.

6 I want the Court to appreciate that the materials I  
7 need for some of my witnesses are going to be in my office and  
8 I'm going to have to go in and get them. I'm not going to have  
9 the privilege or opportunity to sit next to these witnesses  
10 when I prepare them like I normally would, and maybe that's the  
11 world we live in. But in addition to witnesses who might be  
12 working on COVID-related activities, we have to be able to talk  
13 to them about whether they have child-care issues, whether they  
14 have --

15 THE COURT: Let me just interrupt just for one moment.

16 You're going to talk about this. You're going to talk  
17 about which witnesses you think you have the capability of  
18 moving forward with and you're going to put those at the top of  
19 the schedule. Those that you feel you have some difficulty  
20 with as a result of the crisis, maybe those are going to go  
21 later.

22 Look, I appreciate everyone would prefer to be in  
23 their offices and dealing with these in the traditional way  
24 that we deal with things, myself included. But I do believe at  
25 this point in time that we do have to look at alternatives to

1       how we traditionally approach these issues. And I'm not saying  
2       that you have to fully decide what you're going to do in terms  
3       of moving forward tomorrow, but I think a dialogue needs to be  
4       opened as to how we can begin to accomplish the tasks that are  
5       before us with due consideration since some of these issues are  
6       going to be difficult. But we're going to have to work through  
7       them and try to make arrangements for a schedule with those  
8       individuals who can be deposed. I think that we are going to  
9       have to move forward with video conferencing, we're going to  
10      have to address any logistical issues that arise and try and  
11      finesse those issues so that we can move forward.

12               I fully understand that individuals might have some  
13      difficulties as a result of this crisis, whether it's on the  
14      lawyer end or whether it's on the witness end, and I'm happy to  
15      hear from you on those issues, but I think we have to get the  
16      ball rolling in terms of how to move forward on this. And in  
17      order to do that you have to talk to each other.

18               MR. THOMPSON: You're right, your Honor, and that is  
19      the primary purpose of our motion for a protective order such  
20      that we have the time to do that, so that we pull down the  
21      depositions in May, have them rescheduled and then talk about  
22      how best to move forward with each individual witness.

23               THE COURT: Here's what I want to do. I don't think  
24      that we need to change the schedule for me at this point.  
25      We're now in April. Why don't you folks talk about this for

1 the next week and see if you can deal with tweaking the  
2 schedule and figure out how to move forward with certain  
3 depositions. I mean, rather than a wholesale, put off the  
4 depositions, I would rather you talk and determine which  
5 depositions can actually go forward through this means so we  
6 can make some progress here.

7 And I'm not certain that this is just an issue that's  
8 going to be May, it might be an issue that we have to deal with  
9 in June. I don't know how much further it's going to go.  
10 Things are unpredictable at this point in time. It may change.  
11 And you watch the news and day-by-day you have sort of a  
12 different instruction in terms of moving forward. But I think  
13 we have to be prepared so that we can make further progress on  
14 our case.

15 But again, I'm going to underscore: I'm sensitive to  
16 what Defendants are saying in terms of some of their witnesses  
17 and I'm certainly not going to have someone who has been  
18 directly impacted by COVID-19 sit for their deposition. I'm  
19 going to be flexible on this. But I think certain depositions  
20 that don't have any issues associated with them as far as this  
21 crisis that can proceed should be put in the queue, put on the  
22 schedule so that they can proceed. But I don't know who those  
23 individuals are. You folks know who those individuals are, and  
24 the only way we're going to get a schedule for moving forward  
25 is if you communicate with one another.

1           MR. PENNOCK: Very good, Judge. I'll reach out to  
2 Craig. We'll with set a time to at least get the ball rolling  
3 with discussions tomorrow and we'll take it very quickly to try  
4 and resolve all these points that you're making.

5           THE COURT: Perfect.

6           MR. THOMPSON: Your Honor, just making it clear for  
7 the record that, understanding your Honor's point, being  
8 impacted by COVID is not only working on COVID-related issues,  
9 there are other ways that parties and witnesses are impacted by  
10 COVID that we need to put into the discussion as well for  
11 every --

12          THE COURT: And I tend to agree with you there. I'm  
13 sensitive to those issues. I understand what you're saying.  
14 But I'm certain that there will be some individuals who do not  
15 fall into that category although I'm not privy to that  
16 information at this point in time, that's why I think you folks  
17 have to talk.

18          MR. THOMPSON: And one final point. In another piece  
19 of litigation I was involved in -- Mr. Overholtz mentioned  
20 some -- in a litigation I was involved in in Maryland, the  
21 magistrate judge there was also sensitive to the needs of all  
22 the parties, all the witnesses. But he did indicate very  
23 clearly, look, if anyone, anyone, paralegal, court reporter,  
24 LAA or whomever has any concern, problem going into the office,  
25 doing anything related to this deposition, they have veto power

1 and it won't go forward. There was an understanding that there  
2 were folks who were scared.

3 Mr. Brown can't go into his office. I can't go into  
4 my office. I can't meet with my witness. I can't sit down  
5 with my witness to prepare them. I, like Mr. Brown, am an old  
6 school guy and like paper behind us. It won't be able to be  
7 created. Those are all the things that will be go into the mix  
8 of this conversation when we meet.

9 MR. PENNOCK: I'm more old school than both of you,  
10 and we'll be able to do this very effectively, Craig.

11 But let's start just talking about it and you can list  
12 down all the issues you have and we can try to find a way  
13 around them.

14 THE COURT: I think that's appropriate.

15 MR. GRAND: I find that most offices, even though  
16 they're shut down, some people are working on Scype and Zoom,  
17 essential personnel. I haven't encountered a law firm yet that  
18 doesn't have a mail room and isn't mailing things out to  
19 lawyers who need them.

20 THE COURT: I'm tend to agree to that, but I'm happy  
21 to hear if there are circumstances where it becomes difficult  
22 to do that. So I'm happy to hear that. But I do recognize  
23 that law firms are generally sending in a few people to at  
24 least pick up the mail and forward materials to lawyers who  
25 need them. But I'm very sensitive to that issue and I



1 understand what you're saying. At the same time I think you  
2 need to advance the ball on this issue. And certainly  
3 discussing it, thinking about a schedule, thinking about some  
4 of the logistics here are important and I think we need to move  
5 it forward.

6 MR. THOMPSON: This is the final thing I will say and  
7 I apologize for extending the conversation. But I'm gathering  
8 that part of what you're directing us to do is also negotiate  
9 the CMO that was submitted by --

10 THE COURT: Yes, certainly.

11 MR. PENNOCK: Judge, we'll get on it.

12 THE COURT: Thank you very much.

13 All right. I think our next issue, unless someone  
14 wants to add to the schedule, it's Open Motions to Challenge  
15 Privilege Claims. It's an issue that we had touched upon at  
16 some point in the past. I'm not certain where we are on that  
17 issue, so if someone wants to discuss that, you may go ahead.

18 MS. O'CONNOR: If I may, there are a couple more  
19 bullet points under "Update on Discovery"

20 THE COURT: I'm sorry. Okay. Go right ahead.

21 MS. O'CONNOR: Thank you. I appreciate it.

22 Very quickly on the Status of Depositions, former  
23 AstraZeneca employees residing in Sweden, our local counsel has  
24 been in touch with the court. We learned that the court  
25 virtually closes for the summer, and so there's a proposal on

1 the table before the court to push the Swedish depositions -- I  
2 think it's eight altogether -- to the point in time when the  
3 court reopens. There's no scheduled date yet, but we're  
4 keeping our eye on the ball with regard to those eight Swedish  
5 depositions for which your Honor did issue a Letter of Request.

6 THE COURT: Okay. Any issue from anyone on that?

7 MR. BROWN: Your Honor, this is Arthur Brown.

8 I know there was a proposal for late August. It has  
9 not been set by the Court but I think that was the Plaintiffs'  
10 local counsel's proposal to the court in Gothenburg. That  
11 might pose some issues for us. We will, of course, report back  
12 to you on May 20th about some of those issues. I would note  
13 that all of the former witnesses, the eight witnesses who were  
14 subject to the Hague Order are over 65, an at-risk group for  
15 COVID. I'm sure the court there will make accommodations for  
16 those folks. We just don't know much about it yet. We have  
17 not had a chance to fully review the submission, but we'll  
18 update you on May 20th.

19 THE COURT: Okay, that sounds fine.

20 Any issue with that?

21 MS. O'CONNOR: No. Just to note that perhaps  
22 additional depositions might also be a possibility with regard  
23 to those depositions.

24 Paul, I'm sorry. You were going to say something.

25 MR. PENNOCK: No, there's no issue. I mean, we were

1 just following the court's lead over there and we'll see  
2 what --

3 THE COURT: I think that's the best approach. We'll  
4 get an update during our next call.

5 MS. O'CONNOR: Also, Judge, something that I had  
6 brought up at the last CMC, and that refers to the PSC's third  
7 request for production of documents and materials. In this  
8 case we're talking about histopathological materials, tissues,  
9 drugs and tissues and color photographs and slides of tissues  
10 that had been taken during the course of nonclinical studies by  
11 the Defendants.

12 We served our RFP on Takeda and AstraZeneca last fall.  
13 There were meet-and-confers that occurred in the fall, and then  
14 more recently, as I advised the Court at the last CMC, we would  
15 be doing -- we made some headway with Takeda. We received a  
16 list or rather a response to the list that we provided and  
17 studies that are available for which slides, for example, are  
18 available and where. We do have an expert ready, willing and  
19 able to review the slides when perhaps the situation with COVID  
20 opens up and that's feasible. But at least we know what we  
21 have and what we will be looking for. They will be providing  
22 us with some more responses and we await that.

23 However, with regard to AstraZeneca, we've not been  
24 able to really get anywhere. Essentially they've provided us  
25 with nothing by way of a response other than objections and a

1 promise to look for things that goes back to last fall.

2 Mr. Pennock and I had a meet-and-confer conference on  
3 March 9th with counsel for AstraZeneca in which they had no  
4 more to tell us than they had last fall. And then most  
5 recently I wrote a letter to counsel reminding them they were  
6 to get back to us and at least give us a list of what they had  
7 found vis-a-vis nonclinical materials that had been subject to  
8 our request, and basically we have been told -- and counsel  
9 will correct me if I'm wrong -- that because of the COVID-19  
10 situation they are unable to give us any information. And that  
11 is a problem. Before bringing a motion to compel I wanted to  
12 bring this to the Court's attention.

13 THE COURT: All right. Anyone?

14 MR. DOUGLAS: Matt Douglas.

15 So we did have a meet-and-confer on March 9th about  
16 this and we were making progress in pulling together  
17 information from AstraZeneca as to what they were talking  
18 about: Decades old rat kidney tissue from a number of studies  
19 that were done many years ago, and so these things are in deep  
20 archives. We have people looking into it, pulling information  
21 together. That was as of March 9th. I discussed it with Mr.  
22 Pennock and Ms. O'Connor.

23 And then there was a global pandemic and three days  
24 later AstraZeneca imposed restrictions on its employees and  
25 facilities. And that obviously had many high priorities,

1 activities in the company, you know, related to what to do with  
2 ongoing clinical trials, and it's really been in critical mode  
3 since that time and I do not at this point have a specific  
4 update. But we had pulled the indexes and were going to be  
5 digging in archives and trying to figure out what is still in  
6 existence in boxes at those facilities.

7 What I do know is that if there is anything there --  
8 and I think there will be a handful of studies that the  
9 Plaintiffs requested -- it's all outside the U.S., it's some  
10 combination of the UK and Sweden. So there's not going to be  
11 any ability for the parties to travel internationally with  
12 experts and review the materials at any time in the immediate  
13 near future. And I do hope to have an update on what exists  
14 soon, but I don't have one at the time.

15 THE COURT: Understood. That sounds reasonable.

16 Anything from the Plaintiffs on that? It sounds like  
17 it's very difficult to get that information together. But  
18 otherwise as of March 9th you were meeting and conferring in an  
19 effort to actually present something as a production or at  
20 least gather together the materials. Correct?

21 MS. O'CONNOR: Well, no, I disagree with the  
22 characterization, your Honor. First of all, the RFP was served  
23 last September. We had a response on October 30th that  
24 basically said, you know, objection, objection, and we'll  
25 search and we'll look. Then on October 30th I had a call with

1 Mr. Douglas and another attorney and we discussed it. We were  
2 told that they would have a full report for us by some date in  
3 November. I think it was mid-November.

4 THE COURT: Although, you know what, let me just bring  
5 us up-to-date so we can think about what we can actually do.

6 At this point in time, bringing us up to March is when  
7 we were meeting and conferring, and obviously now we're dealing  
8 with another crisis on top of it. Is there any other way to  
9 deal with these materials? That's really what I want to get my  
10 hands around now.

11 MS. O'CONNOR: When I had the meeting with Mr. Douglas  
12 and another attorney, I pointed out to them the deposition  
13 testimony of one of their own witnesses, a 30(b)(6) witness, a  
14 nonclinical, who testified, number one, that the vast majority  
15 of pathology should be available. He did not say that it was  
16 located in Sweden or the UK. He gave the name of the person  
17 who would be able to provide that information about what is  
18 where and so forth.

19 And, you know, I have to ask Mr. Douglas: Did you ask  
20 Mr. Billger (phonetic) or Dr. Billger after our call on the 9th  
21 where these materials were when I pointed out the deposition  
22 testimony to you?

23 MR. DOUGLAS: Your Honor, as I said, we're looking  
24 into it. We're looking at all the sources we can at the  
25 company. In the meantime I believe Takeda and the Plaintiffs

1 have identified material in the new labs that Takeda still has,  
2 so we will continue to try to pin down exactly what AstraZeneca  
3 has and where it is.

4 But in the meantime I believe that when restrictions  
5 are lifted and there's some ability to do it, a starting point  
6 will be for Takeda and the PSC to work out some sort of  
7 protocol to review the materials and do that and then ours will  
8 follow. So we're doing the best we can. I will provide an  
9 update hopefully soon when I can, but I'm not sure there's  
10 anything else to do --

11 THE COURT: Yes. I know. I understand you.

12 MR. PENNOCK: Can I say one thing, your Honor? Simply  
13 this. All we ask at this point because of COVID-19 is that Mr.  
14 Douglas continue to work to find the materials and pin down  
15 where they are, as he just said.

16 THE COURT: And I think that's appropriate.

17 MR. PENNOCK: We may go there now or not be able to go  
18 there for months, and even though we don't have a specific  
19 protocol he should be able to tell us where it all is: That  
20 we've identified this stuff in this location from these  
21 clinical trials. This is what it is. And that seems to me  
22 that can still continue, and we'll wait for him to report back  
23 on May 20th.

24 THE COURT: How does that sound?

25 MR. DOUGLAS: Your Honor, absolutely. I will work on

1       that.

2               THE COURT:   Okay.   I think that that sounds fine.   It  
3       sounds like you're reaching out to your sources trying to do  
4       the best that you can do in order to organize at least by way  
5       of an outline or a framework as to where these materials might  
6       be, so you can give us the update the next time we have our  
7       call.

8               MR. DOUGLAS:   I will.   Thank you, your Honor.

9               THE COURT:   Thank you very much.

10              Anything else on discovery?

11              Okay.   And the last matter on the list that I have  
12       here is PSC's Proposed Motions to Challenge Privilege Claims.

13              Who would like to address that?

14              MR. GRAND:   Yes, your Honor.   As I recall, your Honor  
15       said you were going to decide those on the papers.   I don't  
16       think either party has anything to add at this point.

17              THE COURT:   Okay.   Is that right?

18              MR. DOUGLAS:   Yes, that's correct.

19              THE COURT:   I will take another look at your papers  
20       and then I will get back to you on that.   And those are Docket  
21       Entries I believe 388 and 433.

22              Very well.   Okay.   Well, counsel, we've had a long  
23       call but I hesitate to ask:   Is there anything additional that  
24       you need to discuss?

25              MR. PENNOCK:   No.   I'm trembling now.



1 (Laughter.)

2 THE COURT: We're approaching the finish line. Now  
3 with you're all exhausted, is there anything else that anyone  
4 needs to discuss?

5 UNIDENTIFIED VOICE: No.

6 UNIDENTIFIED VOICE: No, your Honor.

7 THE COURT: No, all right. Well, that sounds fine.

8 Our next call, again, is May 20th I believe. Okay.  
9 It is currently scheduled as an in-person status conference.  
10 We are going to be taking that to a telephone conference. Do  
11 you need to set it up with new numbers or would these numbers  
12 suffice for that in terms of the telephone numbers?

13 MR. GRAND: I think we would likely need to set up new  
14 numbers, your Honor. So we can provide that information with  
15 the agenda as we did this time.

16 THE COURT: That's fine. When do you want to get me  
17 the agenda for that? Usually we do a couple of days  
18 beforehand. Do you want to do either the 15th, or I guess you  
19 could even do the 18th if you like, of May.

20 MR. GRAND: That's fine, your Honor. Thank you.

21 THE COURT: Okay. What should we do? You know what,  
22 let's aim for the 15th. If something interferes and you need  
23 to do it on Monday you can call us and let us know. So May  
24 15th an agenda, joint as usual.

25 All right. I think that's it. Thank you, all, for

1 your presentations, your participation. I hope you are all  
2 healthy and safe at home. And if you need anything obviously  
3 you can contact us. You can reach out to Jacquie our Deputy  
4 who is on the line with us still. If you need a transcript  
5 from Walter, Walter you're still on with us? Right?

6 THE REORTER: Yes, Judge.

7 THE COURT: You can make arrangement with Walter. But  
8 otherwise I look forward to hearing from you on so many of  
9 these issues. I recognize that you're going to be meeting and  
10 conferring on a number of issues. So to the extent there's any  
11 issue arising out of any of those conversations, you can  
12 recognize that we are available if you need a telephone  
13 conference on short notice.

14 But otherwise, good luck to you all and thanks again.  
15 We're concluding for today. Take care, everyone.

16 (At 1:40 p.m., the conference is concluded.)

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